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## PROBLEMS AND DANGERS POSED BY ORGANIZED TRANSNATIONAL CRIME IN THE VARIOUS REGIONS OF THE WORLD

Background document

CONTENTS


| | | Paragraphs | Page |
|---|---|---|---|
| INTRODUCTION | | 1-7 | 3 |
| I. | KEY CONCEPTS | 8-28 | 4 |
| | A. Organized crime | 8-14 | 4 |
| | B. Transnational criminal organizations | 15-28 | 5 |
| II. | EXPLAINING THE RISE OF TRANSNATIONAL CRIMINAL ORGANIZATIONS | 29-42 | 7 |
| | A. Transnational opportunities | 29-37 | 7 |
| | B. National sanctuaries | 38-42 | 9 |
| III. | MAJOR TRANSNATIONAL CRIMINAL ORGANIZATIONS | 43-66 | 10 |
| | A. The Italian Mafia | 46-47 | 11 |
| | B. Russian organized crime | 48-51 | 12 |
| | C. Chinese Triads | 52-55 | 13 |
| | D. The Japanese Yakuza | 56-57 | 14 |
| | E. Colombian cartels | 58-61 | 15 |
| | F. Nigerian criminal organizations | 62-65 | 15 |
| | G. Other criminal organizations | 66 | 16 |


*E/CONF.88/1.

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| | | Paragraphs | Page |
|---|---|---|---|
| IV. | ACTIVITIES OF TRANSNATIONAL CRIMINAL ORGANIZATIONS | 67-91 | 16 |
| | A. The drug trafficking industry | 68 | 17 |
| | B. Smuggling of illegal migrants | 69-72 | 17 |
| | C. Arms trafficking | 73-74 | 18 |
| | D. Trafficking in nuclear material | 75-77 | 18 |
| | E. Transnational criminal organizations and terrorism | 78-81 | 19 |
| | F. Trafficking in women and children | 82-83 | 20 |
| | G. Trafficking in body parts | 84-86 | 20 |
| | H. Theft and smuggling of vehicles | 87-88 | 21 |
| | I. Money-laundering | 89-90 | 21 |
| | J. Other activities | 91 | 22 |
| V. | CHARACTERISTICS AND MAJOR TRENDS | 92-100 | 22 |
| | A. The resilience of transnational criminal organizations | 93-96 | 22 |
| | B. Growing sophistication | 97 | 23 |
| | C. Emphasis on strategic alliances | 98-100 | 23 |
| VI. | THE TRANSNATIONAL CRIME THREAT | 101-123 | 24 |
| | A. The threat to sovereignty | 102-103 | 24 |
| | B. The threat to societies | 104-105 | 24 |
| | C. The threat to individuals | 106 | 25 |
| | D. The threat to national stability and State control | 107-110 | 25 |
| | E. The threat to democratic values and public institutions | 111-112 | 26 |
| | F. The threat to national economies | 113-114 | 26 |
| | G. The threat to financial institutions | 115-117 | 27 |
| | H. The threat to democratization and privatization | 118-120 | 27 |
| | I. The threat to development | 121 | 28 |
| | J. The threat to global regimes and codes of conduct | 122-123 | 28 |
| VII. | CONCLUSION | 124-127 | 28 |

## INTRODUCTION

1. During the last few years, the international community has experienced an increasing number of political upheavals, geopolitical changes and technological restructuring, which have led countries to confront a diversity of challenges for the safety of humanity. No doubt, organized transnational crime, a new dimension of more "traditional" forms of organized crime, has emerged as one of the most alarming of these challenges. Organized transnational crime, with the capacity to expand its activities and to target the security and the economies of countries, in particular developing ones and those in transition, represents one of the major threats that Governments have to deal with in order to ensure their stability, the safety of their people, the preservation of the whole fabric of society and the viability and further development of their economies.

2. Responding adequately to the social, political, and economic problems posed by organized crime requires a clear understanding of their roots, their nature and the probability of success of particular kinds of countervailing efforts. Policy made without such an understanding is both fundamentally flawed and doomed to failure. Without insight there can be no solutions. Accordingly, it is necessary to analyse comprehensively the threat posed by transnational criminal organizations. A threat assessment of this kind has to focus on the steps to be taken to reduce the opportunities available to criminal organizations, to disrupt their operations and indict and punish their operatives, and to limit and if possible remove their profits. Furthermore, any society that aspires to a broad knowledge of organized crime must not underestimate the capabilities of the adversary if it wishes to comprehend and thoroughly evaluate that adversary's strengths and weaknesses.

3. The status of knowledge about organized crime allows key issues to be identified through which all of its features may be investigated. First of all, although there is no single monolithic criminal organization, it is clear that the problem is a global one and that no State or region is immune. Investigations have revealed that the various organizations have different structures, varying criminal emphases and distinct modi operandi but, at the same time, there are increasing linkages and cooperative enterprises among these groups. It is critically important, therefore, that Governments and the public should be made aware of the threat posed by organized crime groups that cross national borders with speed, ease, and a complete disregard for national laws and regulations. Transnational organized crime has developed in ways that pose a serious challenge for Governments and needs to be dealt with as a matter of urgency. The longer the problem is left untreated, the more entrenched and pervasive these groups will become, and the more difficult will it be to disrupt their activities, incarcerate their members and dismantle their organizational structures.

4. Secondly, it would be a grave mistake to underestimate the capabilities of these organizations. Traditionally, organized crime has been seen largely as a law and order problem rather than as something that can threaten the viability of societies, the independence of Governments, the integrity of financial institutions, and the functioning of democracy. The fact that a particular problem has always been conceptualized and understood within certain parameters does not prevent it from taking on new forms that pose a novel and much more formidable challenge. Organized crime has undergone a transformation of this kind and can no longer be understood as simply a local or national phenomenon. The difficulty is that many policy makers tend to focus only on the local or domestic scene and have been slow to recognize the increasingly transnational nature of the problems they are examining. This has happened, for instance, in countries where the rejection of the "alien conspiracy model" of organized crime has led to a preoccupation with local, regional and national aspects rather than the international dimensions of the problem.[1]

5. Thirdly, organized crime groups can vary considerably. While each group has to be understood on its own terms with its own strengths and weaknesses, and not thought of as fitting into a single

model, the study of the problem and the elaboration of policies and strategies should always take into account common characteristics and, more importantly, the links between groups in their operations across borders. A failure to consider these issues may lead to generic countermeasures being drawn up for the use of national and international law enforcement agencies, whereas countermeasures in fact need to be tailored carefully to specific organizational characteristics, to the political, economic and cultural contexts within which groups operate, and to the nature and extent of their operations.

6. A last preliminary remark concerns the reach of transnational organized crime. It is essential to recognize that, in dealing with transnational criminal organizations, criminals must ultimately be sought out in their home base, even though their activities may be geographically very widespread, rather than focusing on specific regions when the real problem is not region specific. This is not to ignore the potential for regional countermeasures as one form of international cooperation to deal with the threat. Regional initiatives provide an important link in a panoply of countermeasures that ideally should encompass local, national, regional, and global levels.

7. The identification and evaluation of policy responses by the international community need to be based on knowledge. An understanding of the opposition and its activities, aims and modus operandi remains crucial to any effort to maintain the rule of law and to promote justice, democracy and peace.

## I. KEY CONCEPTS

### A. Organized crime

8. The term "organized crime" has long been a source of controversy and contention, probably because of differences in the ways of approaching various features of the problem. A broad consensus has nevertheless emerged on several conditions that have to be met before the term may be considered applicable.

9. Participants in criminal organizations are considered to be persons associated for the purpose of engaging in criminal activity on a more or less sustained basis. They usually engage in enterprise crime, namely the provision of illicit goods and services, or of licit goods that have been acquired through illicit means, such as theft or fraud. Organized crime "represents in virtually every instance an extension of a legitimate market spectrum into areas normally proscribed. Their separate strengths derive from the same fundamental considerations that govern entrepreneurship in the legitimate market place: a necessity to maintain and extend one's share of the market".[2]

10. The activities of organized crime groups require a significant degree of cooperation and organization to provide the illicit goods and services. Like any business, the business of crime requires entrepreneurial skill, considerable specialization, and a capacity for coordination, and this in addition to using violence and corruption to facilitate the conduct of activities. This can range from payoffs to law enforcement officials to the infiltration or co-option of political authorities. Although it has been suggested that, in some instances of organized crime, the use of violence and corruption is not as widespread as it is presumed to be, in other cases it is very much in evidence.*[3] Furthermore, both violence and corruption are tactics that organized crime groups tend to resort to for self-protection, the settlement of disputes and the facilitation of illicit business activities.

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*Some cases of organized crime, however, also involve extensive corruption; see, in this respect, Ethan Nadelmann, Cops Across Borders (University Park, Pennsylvania, Pennsylvania State University Press, 1993), especially pp. 251-312.

11. The experts are also concerned, however, with more controversial issues, such as the size, structure and cohesion of criminal organizations. At one end of the spectrum are those who see organized crime in terms of large hierarchical organizations that are structured rather like traditional corporations. At the other end are those who contend that "for the most part, organized crime groups tend to be loosely structured, flexible, and highly adaptable. In fact ... the real power and effectiveness of organized crime is found in these amorphous qualities. Rather than resembling a formal corporate structure, organized crime more closely resembles a social exchange network in the community".[4] Moreover, it is argued, these groups tend to be relatively small in size, fluid in nature and characterized by considerable opportunism. Rather than being seen in terms of dichotomies between small or large organizations and formal structures or informal networks, however, these dimensions can be best understood in terms of a continuum from small to large and from fluid network organizations to bureaucratic structures. In addition, it is important to consider also the elements of continuity and evolution that characterize organized criminal groups. Moreover, some groups may combine elements of the formal hierarchical structure at certain levels, with a more amorphous fluid network at the lower levels.

12. Size and degree of formal structure provide two dimensions along which groups can be identified and compared, as a preliminary to identifying their strengths and vulnerability and devising appropriate countermeasures by governmental and law enforcement agencies.

13. A third important variation concerns the scope of criminal activities. Some groups are highly specialized and focus upon one kind of activity, such as prostitution or drugs; others engage in a broader range of criminal activities, such as credit card fraud and various financial "scams".

14. The discussion of organized crime has thus far concentrated on the traditional aspects of the subject. There has been, however, a major transformation, whereby what had traditionally been a domestic, local or national problem, was transformed into a major regional and global problem, with pervasive and far-reaching consequences not only for individual States but also for the international community of States.

## B. Transnational criminal organizations

15. The term "transnational" is generally used to refer to the movement of information, money, physical objects, people, or other tangible or intangible items across State boundaries, when at least one of the actors involved in this movement is non-governmental.[5] Terrorist groups are similar in nature to many corporations. Criminal organizations are also increasingly engaged in activities that tend to cross national borders.

16. Virtually any tangible item involved in transnational transactions is likely to have a significant economic dimension, in that it can be treated as a commodity or service to which monetary value can be attached.[6] Since the crime industry is about the criminal exploitation of business opportunities and is dominated by supply organizations, it is no surprise to see organizations springing up that transport illicit commodities across national jurisdictions.[7]

17. The globalization of trade and of consumer demand for leisure products made it natural for criminal organizations to move from national activity to transnational operations. Of course, not all those involved in organized crime operate at this level, but there are inextricable connections between the local and the global, and the transnational dimension of crime has taken on unprecedented importance. Furthermore, it is likely that organized crime groups that are still predominantly national in scope will increasingly operate across borders in the future, in order to exploit market opportunities in other States.

18. The provision of illicit goods and services has never been completely inhibited by national boundaries. Indeed, "smuggling has often been called the world's second oldest profession".[8] The scale of smuggling activity, however, has grown well beyond efforts to avoid tariffs or taxes on licit products, and to a growing extent involves trafficking in illicit products.

19. Criminals and criminal organizations have increasingly engaged in cross-border activity, both in response to market opportunities and as a means of reducing their vulnerability to law enforcement efforts. Uneven criminal justice and law enforcement capabilities mean that the degree of risk varies considerably according to the location of the organization. Consequently, criminal organizations tend to have a home base in areas where the risks are low and engage in providing illicit goods and services to markets where the profits are very high.

20. By acting transnationally, criminal organizations are able to obtain access to lucrative markets and to find points of vulnerability that they can infiltrate, while still operating from areas where they are relatively immune to law-enforcement efforts. They also channel the proceeds from illicit activities through the global financial system, often using tax havens and relatively unregulated banking centres as major points of access.

21. These activities have become sufficiently important to suggest the emergence of what have been termed "transnational criminal organizations", that is, organized crime groups that have a home base in one State but operate in one or more host States where there are favourable market opportunities.[9] These organizations have become major players in global economic activity and are the key players in illicit industries, such as drug production and trafficking, that are global in scope and yield profits higher than the gross national products of some developing and developed States.

22. They bear many similarities to transnational corporations and, like transnational corporations, they vary considerably in structure, strength, size, geographical range and the scope or diversity of their operations. Some are global in reach and organized hierarchically; others are more limited in the scope of their operations and more fluid in structure. Their common feature is that they engage in unregulated forms of enterprise, involving illicit products and services, the illicit smuggling of licit products, the theft of licit products, or all three kinds of activity.

23. In trying to understand these organizations, a useful starting point is to view them as a blend of the corporate and the criminal and, for the purposes of analysis and, in certain respects only, as a mirror of transnational corporations. Like transnational corporations, their major concern is the pursuit of profit, and in this pursuit they engage in far-flung economic activities that readily cross national borders. Moreover, both transnational criminal organizations and transnational corporations share a desire to maximize their freedom of action and to minimize the effects of both national and international control over their activities. While this is a useful starting point, however, transnational criminal organizations differ from transnational corporations in several important respects.

24. First of all, transnational corporations may use economic incentives and sometimes act ruthlessly in order to achieve their economic objectives but, when licit corporations break the law, it is the exception rather than the rule. With transnational criminal organizations, in contrast, law-breaking is the norm and a key element of their very identity. Although these organizations may invest in licit enterprise or engage in licit business, these enterprises are usually subordinate to their illicit activities. Transnational crime can thus be described as a "form of economic commerce by illegal means, involving the threat and use of physical force, extortion, corruption, blackmail and other methods, and the use of illicit goods and services".[10]

25. There are crucial differences in the means whereby the two kinds of organization obtain market access. In the search for global markets, their antipathy towards national boundaries and their quest for autonomy, transnational criminal organizations are at variance in degree, but not in kind, from transnational corporations. The means they use, however, vary considerably. While licit corporations negotiate with Governments for permission to conduct operations on sovereign territory, the criminal organizations obtain access through circumvention rather than consent, and systematically evade efforts to detect, monitor, intercept and disrupt their activities.[11]

26. Another important element is the use of corruption and violence. While corporate use of violence or bribery is not completely unknown, it is not the norm, whereas criminal organizations use both violence and corruption as a matter of course. Violence is used to intimidate or eliminate business rivals or even government and law enforcement authorities that attempt to inhibit the activities of transnational criminal organizations. Violence is also a means of maintaining internal order and discipline.*

27. Corruption is used to provide a congenial environment in which the criminal organizations can carry on their activities with impunity. It can range from the bribery of low-level law enforcement officials to ignore particular criminal activities to the offering of inducements to high-ranking government officials to acquiesce in the group's activities and to provide information about countermeasures by the Government. Corruption can be used to neutralize both individuals and institutions and can have deleterious effects on political culture and on the social fabric.

28. Criminal organizations not only supply illicit products but also steal licit products. The widespread use of theft is another factor differentiating transnational criminal organizations and licit transnational corporations. The notion that transnational criminal organizations are concerned with minimizing risk and maximizing profit is very much in accord with licit business. The difference is that the risks the criminal organizations are prepared to take are much greater than those contemplated by corporations in licit business. Moreover, the risk-reduction activities are themselves aimed at the institutions of government.

## II. EXPLAINING THE RISE OF TRANSNATIONAL CRIMINAL ORGANIZATIONS

### A. Transnational opportunities

29. The nature of crime reflects many features of society. With the vast increase in the number of economic and social transactions across national borders and the increasing porousness of the Nation State, it is natural and inevitable that organized criminal activity should also move from the national to the transnational level. Alongside the new opportunities that have opened up for legitimate entrepreneurs, new opportunities for illicit enterprise have also manifested themselves.

30. Opportunities at the global level stem from long-term secular trends in global politics and economics that have encouraged the development of a myriad of transnational organizations. The evolution of the "global village" has fundamentally changed the context in which both legitimate and illegitimate businesses operate and has opened up unprecedented opportunities for transnational crime. Increased interdependence among nations, the ease of international travel and communications, the permeability of national boundaries and the globalization of financial networks have created global

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*This theme is developed in John M. Martin and Anne T. Romano, Multinational Crime (London, Sage Publications, 1992).

markets for both licit and illicit commodities. The scale of these activities can be understood in large part as a reflection of opportunities presented by changes both in international relations and within States. Transnational criminal organizations are both contributors to and beneficiaries of several major changes in global politics and economics. The following data may shed some light on the speed with which the world market has evolved:

(a) The speed and ease of international transport has greatly increased the ability of people and products to cross national boundaries. "Between 1960 and 1974 ..., passenger volume on international commercial flights rose from 26 billion passenger miles to 152 billion."[12] By 1992 the figure had increased to between 600 and 700 billion passenger miles,[13]

(b) The growth of international trade, facilitated by the free trade system of the postwar period, has caused a vast increase in the import and export of goods and services. In 1970 global imports totalled 330,940 million United States dollars. By 1980 the figure had reached $2,047,303 million and by 1990 had increased to $3,533,383 million.[14] Moreover, as the use of containerized shipments has grown, so has their use to smuggle large volumes of illicit products, including drugs, across borders, a development that illustrates the ability of transnational criminal organizations to exploit licit trade in a parasitical fashion.

31. The growth of global trade has been accompanied by the evolution of global financial networks. The reliance on a few hard currencies as a global mechanism of exchange has facilitated the growth of transnational economic transactions. The scale and complexity of these transactions, however, have made it enormously difficult for Governments to regulate and control monetary movements across national boundaries. This is not surprising: money is "the most fungible of all commodities. It can be transmitted instantaneously ... It can change its identity easily and can be traced only with great effort".[15]

32. The world has also witnessed the rise of cosmopolitan world cities, which act as the key nodes in the global economic system, as the repositories of capital and wealth, and also as major facilitators of cross-border transactions. Such cities are the successors to the port cities that, in the past, were often the major incubators for the development of criminal organizations.[16] As such they provide bases from which these organizations can operate. Entrepreneurial centres that have played a crucial role in transshipment of licit goods also tend to be used as transshipment centres for illicit goods. The uncontrolled development of industrial and post-industrial societies, which have become "mass consumption" societies, has had its schizophrenic side-effect. Surplus wealth has created new opportunities for recreation and leisure and a demand for illicit goods and services.

33. The communication revolution has created a degree of global transparency that has highlighted inequalities among societies and encouraged the desire to emulate the patterns of consumption of economically advanced societies. A global market place has emerged in which consumers "have access to information about goods and services from around the world" and entrepreneurs have recognized the opportunities for global marketing.[17] The best example of a global illicit market can be seen in the emergence of illegal drugs as a global commodity of immense significance. Although the drug of choice differs from region to region, illicit drugs have become a truly global product. Some estimates have suggested that the global trade in drugs is larger than the global trade in oil and place the figure as high as $500 billion a year.[18]

34. The end of the cold war and the triumph of capitalism and liberal democracy have facilitated the introduction of entrepreneurial capitalism into Eastern Europe and the former Soviet Union. At the same time, these States have yet to develop anything more than the most rudimentary mechanisms for regulating the kinds of economic enterprises that are emerging. The turbulence that has arisen, the

decline of existing structures of authority and legitimacy, the resurgence of ethnic and regional conflicts and the rise of subnational groups have provided new opportunities and pressures for criminal activity, in some cases as a source of funding for weapons for ethnic conflict.

35. Another worrying feature of global integration in a shrinking world is the increase in migration and the growth of ethnic networks, which have been of enormous value to the operations of criminal organizations. While it is clear that most immigrants are law-abiding citizens, migration has greatly facilitated the creation of network structures for the supply of illicit goods. Ethnic enclaves provide a basis for recruitment by transnational criminal organizations that have a national base and can evoke ethnic loyalties, especially when the immigrant groups have not been fully integrated into their adopted society. Even casual participation or marginal involvement can yield greater rewards than those to be obtained through the licit economy. Moreover, ethnic networks are very difficult to penetrate. The barriers of language and culture provide built-in defence mechanisms that are strengthened by ties of kinship and inherent suspicion of authority.

36. All these developments present new opportunities for transnational crime. The scale of global economic activity, for example, makes it possible to hide illicit transactions, products and movements within licit transactions, products and movements. At the same time, the growth of a global financial system allows criminal organizations to move the profits from their illegal transactions with speed, ease and relative impunity. Money-laundering is simply one sub-set of the much larger problem facing States in their efforts to restore control over a global financial network that operates according to the logic of the market and is not readily amenable to national preferences or the efforts of central or even coordinated management. As one commentator has noted, "the world in which the new economy functions is more akin to an electronic commons than it is to an economy. And like any commons - a grazing commons in an ancient English town, for example - this new electronic space is owned not by governments but by the people who use it".[19] The sheer volume of money in the financial system and the ease with which it can be moved electronically have also made it much easier to obscure, move, and "clean" the profits from illicit activities. The system itself has outrun the development of rules and regulations. There are also so many points of access to the global financial system that making access in some areas more difficult for money earned through illicit activities does not eliminate laundering, it simply encourages its relocation.

37. Against this background, it is not surprising that transnational criminal organizations display considerable entrepreneurial flair, rivalling transnational corporations in the scale and sophistication of their efforts to create and exploit global markets.

## B. National sanctuaries*

38. At the national level, criminal organizations with the capacity for cross-border activities have flourished where the State has been weak or acquiescent, and where its apparatus has been corrupt or collusive. For example, Governments that are lacking in legitimacy and authority or are not fully in control of the territory under their jurisdiction provide congenial environments for the emergence of transnational criminal organizations. For example, two factors have been identified as crucial to the establishment of a corporate headquarters and processing centre for the cocaine industry: first, the attack on government legitimacy by "narco-traficantes" and the consequent weakening of the State, and secondly, the existence of geographical features that have allowed many regions of a particular country such a high degree of autonomy from the Government that the drug "barons" can freely dominate those

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*In the present context, the term refers to an area that is not the target of significant law enforcement attention, in some cases because of the absence of law enforcement capabilities.

regions.[20] From this standpoint, it can be argued that the failure of the international community to realize the danger has allowed the situation to flourish, with the country having come to be dominated by the illicit drug industry.

39. Perhaps the most striking recent example of the way in which transnational criminal organizations can thrive in an environment of political, social and economic upheaval can be seen in the States of the former Soviet Union. Russian criminal organizations are not new, but the demise of the Communist Party, the disintegration of the Soviet Union, and the collapse of the criminal justice system clearly produced conditions that were highly conducive to the consolidation of existing criminal organizations and the emergence of new ones. Groups that had been limited in the scope and impact of their operations by the intrusiveness of the Communist Party have become much more active and successful. The implication of the Russian example, which reflects the situation elsewhere, is that organized crime thrives amidst political and economic turbulence. Weak government, though, is only one of the several forms of government that allow transnational criminal organizations to operate with impunity. There are also acquiescent Governments that are unwilling, rather than unable, to take counteraction, either because they fear the disruptive consequences of such action or because they regard the net effect of transnational criminal activity as beneficial to society. This type of permissive environment makes an ideal home base for transnational criminal organizations.

40. Corruption among government officials is another factor; they derive so much direct benefit from criminal activity that they are unwilling to do anything to reduce or contain it. There is also what might be termed the "collusive" factor, when those in power are themselves deeply involved in some form of criminal activity. Perhaps the best example of this occurred in the early 1980s in a Latin-American country where the linkages between drug traffickers and high government officials were so strong that it was impossible to disentangle the military government from the narco-traffickers; so much so that the country came to be described as a "narcocracy". The difference between collusive and corrupt practices lies in the degree of direct involvement in the organized crime industry.

41. Some areas, of course, might be characterized by both weakness and corruption. In these circumstances, the organs of State, the criminal and the commercial spheres tend to become increasingly enmeshed and entangled. The greater the symbiosis, the more the transnational criminal organization is able to function without hindrance or impediment. Establishing what is, in effect, an autonomous base, the transnational criminal organization can then engage in its illicit business on a regional or global scale, knowing that, although some of its activities may be disrupted by foreign law enforcement efforts, the core of the organization is unlikely to be seriously threatened.

42. Symbiotic relationships could also be established with Governments outside the home State of the organization. Transnational criminal organizations have a substantial capacity to corrupt Governments and infiltrate commercial institutions. There is also a highly dynamic quality to these organizations. As the Secretary-General noted in his report on the control and proceeds of crime, submitted to the Commission on Crime Prevention and Criminal Justice at its second session, "Consonant with the modern corporate structure of organized and transnational criminal groups, profits are systematically 'reinvested' to ensure smooth operations and finance the expansion which often has become the long-term strategic objective." (See E/CN.15/1993/4, para. 14.) Against this background, some of the major transnational criminal organizations are analysed below.

## III. MAJOR TRANSNATIONAL CRIMINAL ORGANIZATIONS

43. There is no single model of transnational criminal organization. The groups vary in shape and size and in skills and specializations. They operate in different geographical domains and different product

markets and use a variety of tactics and mechanisms for circumventing restrictions and avoiding law enforcement. Transnational criminal organizations range from highly structured organizations to more fluid and dynamic networks. In business terms, they extend from corporations to local franchises. For example, the drug trafficking cartel based in the city of Cali, in Colombia, is perhaps the nearest to a formal corporate structure based on a clear hierarchy, functional specialization and forward integration of activities. It is also a fairly large organization - albeit involving many separate and distinct sub-groups - with extensive global operations. At the wholesale and retail levels, it is divided into small cells that operate locally, keep meticulous financial records, and return the proceeds of their drug sales to their corporate executives. At the other end of the spectrum are the small, highly fluid Nigerian organizations, which act as couriers and engage in only the trafficking stages of the drug industry.

44. Another way in which transnational criminal organizations differ is in the scope of their activities. Nigerian organizations, for example, engage in an extensive range of criminal activities, including credit card fraud and business swindle. Russian criminal organizations have an even wider repertoire of operations and seem indifferent to whether the product they traffic in is drugs, arms, industrial metals or nuclear material. Their activities also include bank fraud and embezzlement, extortion, prostitution, car theft and kidnapping. Asian criminal organizations, such as the Yakuza and the Chinese Triads, also operate across the whole spectrum of illegal activities. The Colombian cartels, in contrast, are in the drug industry and everything else is subordinate to that. They engage in corruption, violence and money-laundering only to promote their business.

45. Although transnational criminal organizations are the quintessential "sovereign free" actors, they do make alliances with other criminal organizations, with terrorist and insurgency groups, and sometimes even with Governments.* The nature, purpose, scope and robustness of these alliances are not well understood. Nevertheless, they reflect the fact that the organizations have become sophisticated in their operations and behave as rational actors to enhance their business opportunities and to minimize their vulnerability.** Moreover, the organizations are often characterized by a very good business sense, by an efficient and effective management system based on generous financial inducements and severe penalties, by effective intelligence and counter-intelligence capabilities, and by considerable resilience.

## A. The Italian Mafia

46. In considering transnational criminal organizations, the Sicilian and Italian Mafias stand out as among the most complex and intriguing of these organizations. The Mafia has been variously defined as "a type of criminal association; a historical reality; a cultural code, albeit one that is exploited; or a power structure which interacts with the legal system in all the multiplicity of its forms".[21] As used in Italy, it generally refers to the Sicilian Mafia or "Cosa Nostra", the Neapolitan Camorra, predominantly formed by local organizations, the Calabrian 'Ndrangheta, with a family-based structure that deals in contraband tobacco, drugs and kidnapping, and the Sacra Corona Unita in Apulia, established by Cosa Nostra to exploit the seaboard of the region for drug trafficking. The most important of these, however, is clearly the Cosa Nostra. Like the other Italian groups, the Cosa Nostra is based upon the law of silence and close associations that are partly functional, partly personal and familial, and partly based on fear. If the Sicilian Mafia retains many of its traditions, however, it has

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*The term "sovereign free" is used by James Rosenau, in Turbulence in World Politics (Princeton, New Jersey, Princeton University Press, 1990) to discuss a wide variety of non-State actors.

**The most recent case where such alliances have been substantiated involves cooperation between the Mafia and Russian organized crime groups in the United States. In an understanding that included a clear division of labour and responsibility, the two organizations were engaged in large-scale fraud that involved smuggling of oil and tax evasion. (See Corriere della Sera, 24 August 1994.)

also proved to be both dynamic and adaptive. Stemming from the imposition of its authority on citizens when the State was weak, the Sicilian Mafia has successfully moved from rural to industrial and business cultures, and from a local and national force to a transnational one.[22] Although many of its activities are still regional and its power remains based in southern Italy, where it has sought to nullify competition in legal business by illegal action, the Cosa Nostra has increasingly become a transnational enterprise. This development has been facilitated by migration flows. Sicilian migration to the United States facilitated a Sicilian share of the American heroin market. The same thing occurred in Germany, where it was recently disclosed that "units of Sicilian migrants, closely associated with their families of origin, operated investment activities and formed echelons of criminal labour-force employed in criminal actions in Sicily".[23]

47. This is not to deny that the Sicilian Mafia has suffered some setbacks. It has not been able to establish a monopoly in the drug market, although it tried to obtain the exclusive rights for imports to Italy and possibly Europe as a whole. In addition, the Mafia assault on the Italian judiciary and police forces between 1983 and 1993 ultimately proved counterproductive. The interlinking with political power and the establishment of a collusive relationship with some sectors of the State has also come under increasing attack. While it has been hurt in recent years by the commitment and effectiveness of a young generation of judges and prosecutors, the upsurge of popular sentiment and the related changes in the political situation in Italy, the Sicilian Mafia still remains an important criminal force. Although it is not the global octopus that it is sometimes portrayed as, the Sicilian Mafia, with increasing links to other criminal organizations, remains a major challenge to law enforcement.*

## B. Russian organized crime[24]

48. Although there has been a major increase in organized crime in the Russian Federation and the other parts of the former Soviet Union, Russian criminal organizations are not an entirely new phenomenon. The "centrally planned economies created scarcities that amounted to nationwide shortages of virtually any item consumers wanted. Organized crime groups ... exploited these shortages in the past and continue to do so".[25] The underground economy in the Soviet Union and the pervasive corruption provided the potential for organized crime, but were kept under control by the dominance of the Communist Party. The reforms initiated by Mr. Gorbachev, however, destroyed the mechanisms of social, political and economic control. The collapse of the Communist Party, and with it the Soviet State, also removed the system of criminal justice. The new environment was a very permissive one for organized crime, with few laws against criminal associations and continued inefficiencies in the economic system. The transition to the market economy was also made without a clear regulatory framework. As has been noted, the Russian Federation started to develop a free market without the rules and regulations that are necessary to ensure its integrity, efficiency and effectiveness.[26] At the same time, the end of the cold war made it easier for the groups in the former Soviet Union to engage in transnational criminal activity. The result has been a consolidation of existing criminal groups, the rise of new organizations, and the diversification of criminal activity. In 1993, it was estimated that there were 4,352 organized crime groups in the Federation; by April 1994 the figure had risen to 5,700. Moreover, 200 of these groups were regarded as very sophisticated and were believed to be operating outside the Federation in 29 other countries.[27]

49. One analysis has identified several major kinds of criminal enterprise. As well as the old style party officials, there are also many ethnic-based groups. These include the Georgian Mafia, which

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*The "global octopus" argument is developed in Claire Sterling, The Mafia (London, Hamish Hamilton, 1990) and more recently in the same author's Thieves' World (New York, Simon and Schuster, 1994).

controlled much of the black market under the Communist system and has subsequently extended the range of its activities, the Chechens and Azerbaijani groups, and others who help to account for a major upsurge in trafficking activities not only in drugs but also in metals, weapons, nuclear materials and even body parts. Moreover, these organizations clearly operate with little regard for national boundaries. In addition to the nuclear materials smuggled from the former Soviet Union, other metals such as magnesium have also been stolen and sold in Western Europe. The scale of this activity is perhaps best illustrated by the fact that in October 1993 an attempt was made to smuggle 300 tonnes of magnesium ingots from the Russian Federation to Western Europe. Although this attempt was foiled, it reveals the audacity of groups that have been able to operate with relative impunity. Moreover, these groups have infiltrated the Russian banking system and have been unscrupulous in their use of intimidation and violence against bankers and businessmen who were not cooperative. As a result, banking, in particular, has become a high-risk profession in the Russian Federation.

50. Although several commentators have identified a group of particularly adept, renowned and high-status criminals, known as "thieves in law", the organizations seem to be very fluid. While "there have been instances of a powerful leadership of isolated groups, there is no discernible overall controlling figure or body".[27] Indeed, there has been a proliferation of crime bosses in the Commonwealth of Independent States, around 500 having been identified and over half of whom are of Russian, Georgian or Ukrainian descent. The typical structure is for each boss to control four criminal cells through a brigadier and two spies. The cells tend to be specialized units, which focus respectively on drugs, prostitution, political contacts and enforcement.

51. From criminal investigation it results that the Russian Mafia has also spread its activities to other countries, including the United States. Among the most important groups are the Odessa Mafia, based at Brighton Beach, New Jersey, but also active in California, the Chechens, who tend to specialize in contract murder and extortion, and the Malina Organizatsia, a multi-ethnic group at Brighton Beach, which maintains extensive international ties and is active in a variety of areas, for example, drug trafficking, credit card fraud, extortion and tax fraud. Although these groups clearly pose a new kind of threat for American law enforcement, the threat is far less in the United States than in the Russian Federation itself, where, as has been pointed out, "domination by the Communist party may be replaced by the controls of organized crime. As in other societies, organized crime will limit free elections and freedom of the press and media. Labour markets, once controlled by state planning and submissive trade unions, will instead be subject to the intimidation of organized crime, which is already a major employer. State ownership of the economy will be exchanged for control of the economy by organized crime groups which have a monopoly on existing capital".[28] To the extent that Russia remains a sanctuary from which these organizations can operate with relative impunity, it is likely that the transnational nature of their activities will become even more pronounced.

## C. Chinese Triads

52. Although some Chinese Triads operate from the Chinese mainland, they are based predominantly in the territory of Hong Kong, which is the home base for the Sun Yee On, the 14K, and the Wo Group, and Taiwan Province of China, where the United Bamboo has its own base. One estimate suggests that there are as many as 160,000 Triad members in Hong Kong, belonging to around 50 different organizations.[29] There has been considerable debate among both practitioners and analysts about the extent to which Triads are formally organized. Perhaps the best way of putting it is that they are like an alumni association. Membership in the Triad permits a degree of trust and allows members of the Triad to work together and give assistance even when they are not personally known to each other. Although there is a formal structure, therefore, with a "dragon head" and specialists such as enforcers and administrators, many of their criminal activities tend to take place among members who operate on

an ad hoc basis and establish fluid network systems that may change from one criminal operation to the next.

53. Triads are involved in a whole range of criminal activities, including extortion, drug trafficking, prostitution and gambling. They also have extensive overseas networks, which allow them to engage in transnational criminal activity with great ease. Indeed, some observers have concluded that the Triad societies have very close links with both the tongs, or chambers of commerce, and the youth gangs that exist in many Chinese communities throughout North America. Not surprisingly, therefore, the Triads are the major importers of heroin from South-East Asia into the United States.

54. The Triads have also been active in Western Europe, especially Amsterdam and London, and a report in the first half of 1994 suggested that the Chinese Triads have been engaged in a variety of activities in Spain, where the smuggling of illegal aliens had become evident from the appearance of large numbers of Chinese nationals in Galicia.[30] As elsewhere, these aliens are often exploited by the criminals as slave labour, are pressed into serving as drug couriers or prostitutes, or are forced to engage in other forms of crime. It has been suggested that this activity is controlled primarily by the Sun Yee On Triad. Heroin trafficking, where sales of "China White" increased as law enforcement authorities cracked down on Turkish trafficking organizations, is largely controlled by the 14K, whereas prostitution and pornography and trafficking in children is controlled predominantly by the Wo On Lok. In addition, there is considerable evidence of loan-sharking and extortion, carried out largely by Dai Hoon, which is in effect an illegal bank that lends money at very high rates, makes loans for gambling purposes and provides money for illegal immigrants.

55. The comprehensive nature of these criminal activities, the difficulties faced by law enforcement agencies in attempting to infiltrate closely knit ethnic groups, and the imminent reversion of the territory of Hong Kong to Chinese rule in 1997, resulting in a possible exodus of Triad members, suggest that the Triad problem is likely to increase rather than decrease.

## D. The Japanese Yakuza

56. The Japanese Yakuza or, as it has also become known, the Boryokudan, the violent ones, has been much more visible in its home base than most other criminal organizations. There are several major organizations within the Yakuza, of which the most important is the Yamaguchi-gumi, which has an estimated membership of over 26,000 individuals affiliated with 944 smaller gangs. The second largest gang is the Inagawa-kai, with over 8,600 members, while the third largest organization, the Sumiyoshi-kai, has over 7,000 members.[31] The Yakuza has been characterized by considerable internecine warfare among its various branches, but this has not prevented it from infiltrating legitimate business and extending corruption into the political system.

57. Perhaps less ambitious than the Chinese in the transnational scope of their activities, the Japanese Yakuza has nevertheless been involved in significant criminal activities across national borders, including the trafficking of methamphetamine into Hawaii and California, as well as the smuggling of guns from the United States into Japan. Moreover, the Yakuza also has a significant presence throughout much of South-East Asia, where Japanese criminals have become a major force in organizing the "sexual slavery" of women. The Philippines, for example, has been used by the Yakuza as a base for the production and smuggling of amphetamines and hand guns, as well as an additional market for hand guns.[32] In addition, the Yakuza has moved into gambling, fraud and money-laundering. In Hawaii, Yakuza members have been deeply involved in the sex and drug trades and have also invested heavily in real estate.

## E. Colombian cartels

58. The Colombian cartels are in many ways unique. Unlike most other transnational criminal organizations, which tend to engage in a range of illegal activities, the cartels are, first and lastly, in the drug business. Indeed, the cartels - and this is particularly true of the Cali cartel that has now become the predominant group in the cocaine industry - have amalgamated corporate and criminal cultures more than any other group. They have developed an industry that is based on sound management principles, such as specialization and division of labour.

59. During the 1980s, Carlos Ledher and other members of the Medellín cartel led the way in applying industrial style transport to the drug trafficking business, increasing the amounts that were transported to the United States by air. The Cali cartel has taken this a stage further and has applied successful business management techniques and meticulous accounting procedures to its activities. Although the Medellín cartel is still active in drug trafficking - and there have been allegations that the Ochoas are still running their drug business from prison - the killing of Pablo Escobar by government forces both highlighted and accentuated the shift in power from the Medellín to the Cali cartel.

60. Rather than confronting the Government and law enforcement, however, the Cali cartel has adopted a strategy of infiltration. The leading members of the cartel present themselves as legitimate businessmen and have increasingly invested in licit businesses. Moreover, their co-option of the local power structure, together with their local patronage, has provided them with a very protective environment in Cali. By eschewing a frontal assault on the State, Cali has also attempted in the past to establish a modus vivendi with a Government that was prepared to tolerate narco-trafficking but that responded vigorously to narco-violence.

61. In its activities in both Colombia and the United States, the cartel has a very specialized cell structure, based around functions such as logistics, marketing etc., and possessing information solely on a need to know basis. This modular approach has the effect of limiting the damage that can be done by law enforcement; even if one group is infiltrated and dismantled, the ability of law enforcement agencies to exploit this and further penetrate the cartel is limited. Although these protective measures set it apart from legitimate business, in other respects the Cali cartel acts like any other transnational corporation. In recent years, for example, it has sought to diversify its markets, with particular emphasis on Western Europe and the newly emerging markets in Eastern Europe and the former Soviet Union, as well as its products, through the production of Colombian heroin that is more compact and cheaper to transport and has higher profit margins than cocaine. In addition, although the Cali cartel continues to use aircraft to traffic drugs into the United States, it has also made increasing use of commercial cargo. At the same time there has been growing sophistication in concealment methods. The incorporation of cocaine base or cocaine into cardboard, glass, plastic and fibreglass reveals a degree of innovation and sophistication that is intended to circumvent law enforcement and interdiction activities.

## F. Nigerian criminal organizations[33]

62. The rise of Nigerian organized crime is relatively recent and is often traced to the collapse of oil prices in the early 1980s and the dislocation that this caused to an economy that relied on oil for 95 per cent of its export earnings by the late 1970s. The result was that a lot of bright, articulate Nigerians - many of them college-educated and many of them living in other countries - were effectively deprived of their source of income. In some cases they turned to crime, with spectacularly successful results.

63. Indeed, Nigerians have developed large-scale trafficking activities and have been identified as second only to the Chinese in the import of heroin into the United States. Once again, this was

facilitated by the fact that they were able to operate from a relatively safe home base, characterized by lack of legislation and law enforcement capacity, as well as a certain political instability, indications of corruption and few resources to devote to the fight against organized crime. They have proved to be very adaptable in terms of finding alternative trafficking routes, concealment techniques, courier profiles and choice of product, and have progressed from simply being couriers for other transnational criminal organizations to becoming major players in their own right. Although there is little evidence of a Nigerian cartel, a loose network of drug barons has been identified and it is clear that even the activities of couriers are carefully orchestrated, the couriers themselves being trained in methods of avoiding detection.

64. Nigerian criminal activities have not, however, been limited to drug trafficking. Nigerian organizations have also engaged in large-scale fraud and extortions, including credit card fraud and fraud vis-à-vis commercial banks and government assistance programmes. They have proved adept at obtaining the documentation for false identities that have facilitated cheque kiting, student loan fraud, social services fraud, insurance fraud, and electronic fund transfer fraud. They have not been involved in major schemes, exhibiting a preference for a large number of smaller-scale activities, generally adopting a low profile. The members tend to live modestly and ship money back to Nigeria, where there is an absence of legislation directed against money-laundering. Their success has nevertheless bred imitation, and individuals and groups from Ghana, Benin and Sierra Leone have also become involved in various transnational crime operations including drug trafficking.

65. Although the law enforcement authorities have had some success in dealing with their activities, the Nigerian organizations have several natural defence mechanisms. The use of a variety of different dialects, for example, reduces the usefulness of wire-tapping and other electronic surveillance devices. In essence, they have a non-technological way of circumventing high-technology law enforcement. The fact that the organizations tend to be based on family or tribal ties also makes them very difficult to infiltrate. Although they may pose less of a threat in terms of corruption and violence than some of the other groups, that threat is certainly not insignificant. Moreover, the long-term ramifications and implications for development of the existence and expansion of transnationally operating organized criminal groups in the region deserve particular attention.

### G. Other criminal organizations

66. This survey is not, of course, comprehensive. Turkish drug trafficking organizations that supply heroin to Western Europe from south-west Asia using the famous Balkan Route, and the variations on it that have been made necessary by the conflict in the former Yugoslavia, are not discussed in detail. Nor are Jamaican Posses, the indigenous American Mafia, Dominican criminal organizations or a variety of other groups. Their activities nevertheless highlight some of the strengths of transnational criminal organizations, showing that they are highly adaptable, very fluid, able to take advantage of weaknesses in particular nations or regions, and difficult to penetrate. As such, they pose a real challenge to the rule of law.

## IV. ACTIVITIES OF TRANSNATIONAL CRIMINAL ORGANIZATIONS

67. Transnational criminal organizations engage in a variety of illicit activities, and it would be impossible to draw up a comprehensive list of all their activities. Some of them are nonetheless particularly relevant and deserve major attention.

## A. The drug trafficking industry

68. In addition to being a major source of income for most transnational criminal organizations, illicit drug activities can best be understood as an industry, with distinct stages of production and distribution at the wholesale and retail levels. It is also a very lucrative industry, largely because there is limited competition among the entities concerned and little threat from substitute products and because both the supplier of the raw materials and the consumers of the final product have very limited power.* The money from the drug trafficking industry goes largely to the trafficking organizations, while the peasants who actually grow coca and opium earn a very modest return, albeit one that is generally better than the profits from growing other commodities. The emergence of the drug trafficking industry as a multi-billion-dollar-a-year industry has given a great boost to the development of transnational criminal organizations and has also led to the emergence of money-laundering as a high-profile activity. There are also increasing signs of a growing linkage with other kinds of trafficking, especially in arms. Furthermore, drug money has been a major source of the government corruption that helps to provide secure home bases for transnational criminal organizations.

## B. Smuggling of illegal migrants

69. One of the most serious developments in transnational crime has been the increase in the trafficking in people. There are several dimensions to this, the first of which concerns the illegal migrants issue. According to one informed estimate, criminal organizations are now attempting to smuggle as many as one million people a year from poor to wealthier countries. Not only does this once again threaten a basic ingredient of national sovereignty, it also places the immigrants themselves in grave danger.

70. Moreover, the would-be immigrants are subjected to considerable hardship, deprivation and indignity. They are highly vulnerable and women in particular are often forced into sexual slavery. Even those who arrive at their destination often owe money to the smugglers and are forced to engage in criminal activities to pay off the debt. Although this problem has received a great deal of attention in Western countries, largely in relation to Chinese immigrants, it is not only a problem for the United States or Europe alone, and it is not limited to Chinese.

71. According to some estimates, immigrants from China form only 20 per cent of those in a pipeline that encompasses India, Iraq, the Islamic Republic of Iran, Pakistan, Romania, Sri Lanka and the Sudan. Those in transit include 60,000 Chinese in Moscow, 80,000 or more Asians, Africans and people from the Middle East in Romania, and significant numbers in staging areas such as Guatemala, the Netherlands and Spain. The scale of the problem is also revealed by the fact that in 1993 there were 1.2 million attempts to enter the United States illegally. Moreover, the smuggling organizations offer substantial bribes to officials and are ingenious in the development of new smuggling routes through Mexico and the Caribbean. One estimate has suggested that the trade yields an annual profit somewhere in the region of $3.5 billion.[34]

72. For the destinations and sometimes the transit States, however, the trade imposes significant and unexpected costs in terms of medical care, food, housing and transportation for the illegal migrants. The problem has reached such levels that it is in danger of provoking a major backlash against legal immigrants and legitimate refugees.

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*For a fuller analysis of the industry, see Phil Williams, "International drug trafficking: an industry analysis", in Journal of Low Intensity Conflict and Law Enforcement, forthcoming issue.

## C. Arms trafficking

73. The difference between the licit and the illicit supply of armaments is not always clear. As with chemical capabilities and the capabilities required to develop nuclear weapons, it often has more to do with who the end user is than with the product itself. In some cases, the end user may be a rogue State that the international community is trying to isolate; in others, it may be an ethnic group trying to circumvent an arms embargo. Whoever the end user may be, however, black market arms deals have three characteristics: they are a covert activity, a large part of the cost is related to the surreptitious nature of the transaction, and the return flow of money is laundered.[35]

74. In addition to their other ramifications and the sizeable profits they generate, these transactions can have a significant effect on local and regional conflicts and on the capacity of terrorist groups to pursue their goals and threaten peace and security. The drug trafficking and arms trafficking businesses also seem to be increasingly interwoven with cases of ethnic involvement in the drug trade for the purpose of purchasing weapons. As one report has noted:

> "There is abundant evidence that organized crime is involved in the illegal arms trade and subversive activities that tamper with the rule of law in different parts of the world. The weight of the evidence indicates that it contributes to the political turmoil and upheaval occurring throughout the world. Drugs for weapons deals have become common in the world of organized crime, and many ethnic and political conflicts are aggravated by this unholy alliance."[36]

The importance of these activities lies also in the potential for major disruption and the consequent threat to security and stability at the national and international levels. There is no telling whether organized criminal groups will resort to stirring and abetting political turmoil as a defence against successful efforts of law enforcement agencies.

## D. Trafficking in nuclear material

75. Trafficking in nuclear material is, above all, a major problem in relation to the former Soviet Union and one that, not surprisingly, has provoked considerable alarm. The possibility that nuclear weapons grade material might be passed to terrorist groups or pariah States attempting to acquire some kind of strategic nuclear capability is a matter of considerable concern to the global community. This issue has placed Germany in the front line; the fullest analysis of the problem has been made by the Bundeskriminalamt and part of it has been made public in a testimony by Hans-Ludwig Zachert, President of the German Federal Police. According to this testimony, there were in 1992 59 fraudulent offers of radioactive material, 99 cases of illicit trade and 18 seizures of actual material. In 1993, there were 241 cases altogether, with 118 fraudulent offers, 123 cases of illicit trade and 21 seizures (3 of which actually involved material from Germany itself and not from the former Soviet Union). In 1993, 545 suspects were identified, 47 per cent of whom were non-German, predominantly Czech, Polish and Russian nationals.[37]

76. The threat appears to be a serious one. This was underlined very starkly by recent developments. According to reports in July 1994 a few weeks earlier, German police searching for counterfeiters had actually found one fifth of an ounce of weapons-grade plutonium, the first case actually to involve fissile material.[38] This reported seizure, as well as that of the neutron emitter, californium 252 in 1993, suggests that there is an increasing diversity in the types of material being seized. On 10 August 1994, the German police seized 350 grams of weapons-grade nuclear material (mixed-oxide fuel for reactors, containing plutonium enriched to 87 per cent), and arrested one Columbian and two Spaniards. Another incident, involving a considerably smaller quantity of nuclear material, but of the same quality, occurred

two days later.[39] The presence of individuals of different nationalities adds an alarming element to the issue, leading the authorities to speculate on the involvement of organized crime groups from various countries and the possibility of links and cooperation arrangements between them. On 29 August 1994, the Hungarian authorities seized a quantity of nuclear material in a hotel room at Budapest, an incident suggesting that the illicit trade in nuclear material is not confined to certain countries only. The German and Russian authorities have reacted to the incidence of smuggling of nuclear material, concluding a bilateral cooperation agreement on 25 August 1994.

77. It is clear that this trade has considerable potential for extortion, as well as for significant environmental damage, if only as a result of improper handling of the materials. Although there are questions about whether there is actually an illicit end-user market, at least in Germany, there is a danger that the organization responsible may change tack if purchasers cannot be found and the material is in hand; extortion can then appear particularly attractive. The fact that nuclear materials are often procured from government-controlled installations in the Russian Federation suggests the involvement of criminal organizations seeking profit. If they cannot obtain these profits in one way, then it is only a small step to attempting to obtain them through some kind of nuclear blackmail. As nuclear disarmament continues, the availability of material is likely to increase rather than decrease.

## E. Transnational criminal organizations and terrorism

78. In considering the activities of transnational criminal organizations, both the use of terror tactics and the links with terrorist and guerrilla organizations are recurring themes. If criminal organizations often resort to terror and develop alliances of convenience with terrorists, however, it is clear that the two kinds of organization have very different objectives. Transnational criminal organizations engage in terror simply to provide a more congenial environment for their criminal enterprises. They are generally willing to work within the existing system as long as this is malleable. In so far as they have political objectives, these are aimed against specific law enforcement policies rather than representing part of an effort to overthrow the existing power structure (much of which they may have already corrupted). Terrorist groups, in contrast, pursue political objectives often aimed at the overthrow of the status quo at either the State level or the international level. In so far as terrorist groups engage in criminal activity such as drug or arms trafficking, this is usually designed to provide resources to enable them to pursue more effectively their political agendas. If the means and ends of criminal and terrorist organizations are very different, however, there may be a growing, and perhaps irreversible, trend towards convergence.

79. One element in this trend is the direct use of terror tactics by transnational criminal organizations. Some transnational criminal organizations, such as the Italian Mafia and the Colombian cartels, have used terrorist attacks against the State and its representatives in an attempt to disrupt investigations, deter the introduction or continuation of vigorous government policies, eliminate effective law enforcement officials, coerce judges into more lenient sentencing policies, and create an environment more conducive to criminal activity. A second element is the willingness of transnational criminal organizations to develop direct links with groups that engage in the widespread use of violence for political purposes. In some cases this may be unavoidable. The narco-traffickers in Peru, for example, have had little choice than to deal with the Sendero Luminoso (Shining Path). Indeed, the Shining Path guerrillas operating in the upper Huallaga Valley have provided protection for the coca growers and narco-traffickers in return for a levy on the drugs. For the traffickers, Shining Path involvement has made decisive government action much more difficult. For Shining Path, the levy has provided funding for its campaign to overthrow the Government. In effect, the linkage is "a business relationship in which each side uses the other to achieve its respective goals".[40] Similar synergies exist elsewhere. In Colombia, for example, the cartels and revolutionary movements such as the FARC and M-19 have developed complex cooperative linkages in spite of a basic ideological antipathy.

80. Another factor leading towards convergence between international terrorism and transnational criminal activity is the changed political context. With the end of the cold war, international terrorism has lost much of the sponsorship it enjoyed in the past. State-sponsored terrorism still exists, of course, but has become far less important. As a report by the Federal Bureau of Investigation noted, "State sponsors of terrorism are less anxious to be connected to terrorist acts, and more countries are attempting to avoid fitting the criteria for inclusion on the State sponsors of terrorism list."[41] Yet this should not lead to complacency. As terrorist organizations find that government financial support is drying up, they seem likely to turn to criminal organizations and activities as an alternative source of funds. In these circumstances, deals involving weapons for illicit products or services are likely to become more prevalent. Indeed, terrorist groups will almost certainly be increasingly willing to engage in criminal activities to fund political terrorism.

81. Another source of convergence is technological opportunity. The theft of nuclear material and its potential use for large-scale extortion and blackmail suggests that the distinction between crimes of extortion and political terrorism will become increasingly blurred. The theft of nuclear material by transnational criminal organizations and its purchase by terrorist organizations is one possibility. Another is that the groups that steal plutonium will themselves use it to blackmail Governments. In short, the motives of terrorist groups and criminal organizations may differ, but the strategies they adopt to achieve their objectives could become indistinguishable if not inseparable. Moreover, the linkages between them will make both traditional law enforcement efforts and counter-terrorist strategies more difficult. The prospect is a formidable one, to which Governments need to address their attention.

## F. Trafficking in women and children

82. Prostitution has long been a major element in the activities of criminal organizations at the national level, and it is no surprise that it also has major international dimensions. Both the Triads and the Yakuza are particularly active in this arena and have held women as slaves in the tourist sex industry in the Philippines, South Korea and Thailand. This kind of trafficking treats women as "commodities that have a market value ... sex work is not there by accident, sex work plays a great part in the world economy where women and children are seen as sources of pleasure and spare parts for the developed world".[42]

83. A variant on this, but one that tends to be more tangential to criminal organizations, involves parents selling their children as brides, often to wealthy men from other countries. Adoption, too, is something that needs more careful scrutiny and regulation, as, according to several reports, international adoption has become a million dollar business, in which babies from South and Central America fetch up to $20,000. Not surprisingly, there have been about 30 cases a year in Guatemala of false mothers offering their children for adoption. Concern about trafficking in babies has created a climate of suspicion and hysteria in some countries and has led to attacks on foreigners wrongly suspected of kidnapping.

## G. Trafficking in body parts

84. One reason for the climate of suspicion about kidnapping has been concern that the abducted children would be killed for their body parts. Although there is little evidence that kidnapping for this purpose has taken place, it is clear that there are lucrative black markets in body parts, especially in Argentina and the Russian Federation. In Argentina, for example, there have been examples of serious transplant abuses, often involving the removal of corneas of patients who were declared brain dead after fabricated brain scans.[43]

85. The problem is perhaps even greater in the Russian Federation, especially as there are as many as 4,000 unclaimed bodies in Moscow morgues. One investigative report found one company that had extracted 700 major organs, kidneys, hearts and lungs, over 1,400 liver sections, 18,000 thymus organs, 2,000 eyes and over 3,000 pairs of testicles. Moreover, one Moscow forensic detective saw these activities as being firmly under the control of organized crime, which he suggested had "elaborate criminal structures for kidnapping children and adults, using their organs for transplants and for medical experiments". He even suggested that "organ transplantation is the most profitable business in Russia and it will grow".[44]

86. There have also been cases of organs being exported using false documents and of confirmed trafficking in Argentina, Brazil, Honduras, Mexico and Peru, largely with German, Italian and Swiss buyers. It is clear that this is an era where the potential for corruption in medical communities is enormous and will remain so until rules governing the purchase or sale of organs are systematically developed and implemented.

## H. Theft and smuggling of vehicles

87. Another significant problem is the theft and smuggling of vehicles. The prevailing pattern here is the opposite of that in the drug trade, the cars being stolen from the advanced industrialized States and supplied to the élites of developing countries or countries in transition. This has proved to be a big problem in the territory of Hong Kong, where luxury cars are stolen and rapidly transported to China on extremely fast power boats. It has also become an extensive problem in Europe, where the number of motor vehicle thefts almost tripled between 1989 and 1993. The proportion of stolen vehicles that are permanently missing - at present more than 40 per cent - is an indicator of the amount moved to other countries. It is also a serious problem in many African countries.

88. Since the political opening, Eastern Europe has become a main area for the movement of stolen vehicles, with Poland as the central point of the illegal transport route. From there, the vehicles are taken to the Baltic republics, or the Ukraine, to the Russian Federation, the Caucasus region or Kazakhstan.[37] Bulgarian and Russian criminal groups have become a major force in this particular area of transnational crime. The same problem also exists in the United States, where "the low apprehension, prosecution and conviction rate of auto thieves make this crime a booming industry, with high profits and low risks". The results are evident in the receiving countries: for example, "in one Caribbean country, a survey conducted by various law enforcement agencies determined that approximately one out of every five vehicles on the docks awaiting clearance showed clear signs that it had been stolen and shipped from the United States. For vehicles worth over $15,000, the rate increased to nearly four out of five".[45] While less serious than some of the other activities of organized crime, car theft is an additional source of revenue and can help these groups to consolidate their position in certain countries.

## I. Money-laundering

89. One of the major activities of transnational criminal organizations is profit taking. Although a considerable portion of this comes from drug trafficking, other forms of transnational crime may account for a significantly high percentage of all the illegal proceeds that enter the global financial system. The problem for these groups, however, is that the money derived from illicit proceeds has somehow to be made legitimate.

90. The laundering process designed to achieve this involves three major stages. The first stage is the placement of cash proceeds into the financial system through banks or other financial institutions. In countries where there are reporting requirements for large cash transactions, this tends to be done through a larger number of small transactions, the so-called "smurfing". An alternative approach is

physically to smuggle large amounts of cash out of the country and deposit it where the reporting requirements are less stringent. The second stage in money-laundering involves what is generally termed "layering", which separates the funds from their source and is designed to disguise the origin of the funds and obscure the audit trail. The third stage is integration, which involves "the introduction of criminally derived wealth into the legitimate economy without arousing suspicion and with some apparent legitimacy for its source".[46] This third stage can consist, for example, in the purchase of real estate or can simply involve the complicity of banks in countries that lack money-laundering legislation.

### J. Other activities

91. Inevitably, in an overview such as this, not all the activities undertaken by transnational criminal organizations can be included. For example, the illegal animal trade, the theft and trafficking of cultural objects or art pieces, and smuggling in precious metals have all been omitted, as have activities such as protection racketeering, the kidnapping of businessmen or the theft of intellectual property through large-scale software piracy. Other areas of criminal activity are old-fashioned piracy on the high seas, for instance in the Malacca Straits, counterfeiting, and activities such as cattle rustling across national borders in Africa. This is not to denigrate the importance of these activities, all of which deserve much more attention. The intent, however, has been to provide a flavour of the range of major operations that fall under the rubric of transnational crime and that are undertaken by transnational criminal organizations.

## V. CHARACTERISTICS AND MAJOR TRENDS

92. An analysis of the major criminal organizations and their activities makes it possible to define the characteristic patterns and trends of transnational organized crime and thus to identify the key features of these groups that make them such a formidable problem for law enforcement authorities. The present analysis is also intended to point the way to effective preventive and control policies by national Governments and to emphasize the importance of enhanced international cooperation in law enforcement and criminal justice activities.

### A. The resilience of transnational criminal organizations

93. Transnational criminal organizations are diverse in structure, outlook and membership, but all of them operate across national borders with great ease and provide formidable challenges for law enforcement at both the national and international levels. One reason for this is their emphasis on loose network structures rather than excessively formal and structured hierarchies. In this respect, they have been ahead of transnational corporations: illegality has compelled them to operate in covert fashion with fluid networks and functional cooperation rather than fixed structures. Indeed, transnational criminal organizations have developed several mechanisms that help them to defend themselves against law enforcement efforts.

94. The flexibility of network organizations is the first and most important characteristic. Because such organizations are highly fluid and have a loose structure, they are able to respond rapidly to law enforcement challenges. The pyramid organizational structure is another relevant feature. The pyramid characterizes most transnational criminal organizations because it insulates their leaders, who are not easily connected with specific criminal activities and are unlikely to be caught engaging in criminal operations. In addition to this, the capacity for replacement of the top leadership and the strict rules for the recruitment of new members are essential to the maintenance of an efficient structure. The capacity for relocation plays an important role as well. Success in combating the operations of transnational

criminal organizations can be countered relatively easily by moving operations to countries where the criminal justice and law enforcement systems are much weaker.

95. Other essential mechanisms exploited by criminal organizations are the infiltration of legitimate business, which often provides a veneer of respectability to the criminal organizations, and the use of patronage to provide excellent counter-intelligence capabilities that make it enormously difficult to mount surprise operations. Last but not least, in view of the dangers it poses to society, is the use of corruption to provide a congenial environment, in which the groups can conduct their business with relatively low risk of interference from law enforcement agencies.

96. The upshot of all this is that transnational criminal organizations are extremely difficult to dismantle or destroy. This difficulty was graphically described by a British customs officer, who compared a smuggling syndicate to spaghetti: "Every piece seems to touch every other, but you are never sure where it all leads. Once in a while we arrest someone we are sure is important ... but once we get him, he becomes no more than a tiny cog. Someone else important pops up in his place."[47]

## B. Growing sophistication

97. Transnational criminal organizations clearly have a significant capacity for learning and adaptation. Some of them also appear to have a sense of strategic vision and engage in sound business practices, such as diversification of activities and the exploitation of new markets. They are increasingly characterized by sophistication and flexibility, resilient and efficient organizational structures, effective management techniques and the use of specialist advisers and in some cases they have even initiated research and development programmes. This has been particularly evident in the area of money-laundering, but also in the way in which ever more ingenious methods of smuggling are being introduced. Indeed, the way in which the organizations use high technology, adopting what appears to be an intensive research and development programme, is illustrative of the innovative approach they are taking to their business and adds to the difficulties faced by law enforcement.

## C. Emphasis on strategic alliances

98. Like transnational corporations, transnational criminal organizations are entering more and more frequently into strategic alliances. In the case of licit corporations, such alliances secure local knowledge and experience for marketing and distribution. Transnational criminal organizations pursue alliances for similar reasons. Strategic alliances permit them to cooperate with, rather than compete against, indigenous entrenched criminal organizations, enhance their capacity to circumvent law enforcement, facilitate risk sharing, make it possible to use existing distribution channels, and enable criminal organizations to exploit differential profit margins in different markets.

99. Operation Green Ice, which culminated in 1992 in around 200 arrests in several countries, revealed the links between the Cali cartel and the Sicilian Mafia. The Mafia was helping the Colombians to break into the New York heroin market in return for franchise arrangements for cocaine in Europe. Similar linkages seem to have developed between the Italian groups and some of the criminal organizations in the Russian Federation, between Pakistani and relatively small Danish drug trafficking organizations, in the Netherlands and Turkey, and even Italian and Japanese criminal organizations. The growth of strategic alliances is likely to continue in the future as the various groups see both formal and informal linkages as providing not only economic advantages but also additional means of circumventing law enforcement.

100. In concluding, the characteristics of transnational criminal organizations, as well as current trends and developments, reveal the extent of the threat they pose to national Governments, to the legitimate

economy, to licit businesses and to legal and normative framework at both the national and international levels.

## VI. THE TRANSNATIONAL CRIME THREAT

101. The threat from transnational crime and transnational criminal organizations is insidious, pervasive and multifaceted. As has recently been noted:

> "Organized crime poses a direct threat to national and international security and stability, and constitutes a frontal attack on political and legislative authority, and challenging the very authority of the State. It disrupts and compromises social and economic institutions, causing a loss of faith in democratic processes. It undermines development and diverts its gains. It victimizes entire populations, targeting and capitalizing on human vulnerability. It co-opts, entraps and even enslaves segments of society, especially women and children, in its diverse and interrelated illegal undertakings, particularly in prostitution."[48]

Although that was an excellent summary of the threat posed by transnational criminal organizations, it may be useful to identify more carefully the various levels at which this threat manifests itself.

### A. The threat to sovereignty

102. Transnational crime, by its very nature, involves the violation of national borders. While it is clear that, in an age of high technology, global trade and financial systems, national borders have become more porous than ever, States still try to regulate what goes through their borders. This is a fundamental attribute of sovereignty. It is also something that is negated by transnational criminal organizations. Indeed, these organizations directly challenge the characteristics of State sovereignty and security that have long been taken for granted. They highlight the permeability of national borders and, in effect, penetrate territories that are nominally under the control of States. States retain sovereignty in a formal sense, but if they are unable to control the trafficking of arms, people and drugs into their territory, then sovereignty loses much of its real - as opposed to its symbolic - significance.

103. The concept of sovereignty retains usefulness as a basis for the international society of States, but no longer reflects real control over the territorial dimension of the State. Although the main purpose of transnational crime is profit, the inevitable by-product, therefore, is a generally implicit - but sometimes explicit - challenge to State authority and sovereignty. The threat is insidious rather than direct. It is not a threat to the military strength of the State, but it is a challenge to the prerogatives that are an integral part of statehood.

### B. The threat to societies

104. Many transnational criminal organizations engage in activities that pose a threat to the fabric of societies. Drug abuse is an often cited example. Although it has to be dealt with in terms of the reduction of both supply and demand, the product, by its very nature, creates its own demand, as has become evident in the process whereby producer and transit countries have developed substantial user populations of their own. Not only does this result in lost productivity, with significant implications for economic competitiveness, but it also entails substantial costs for health care and law enforcement. Moreover, organized crime has developed sophisticated marketing techniques that target new users. The establishment and expansion of organized crime groups, however, irrespective of the activities they engage in, poses the most serious threat to society. Organized crime targets basic values, both legal and political, that constitute the cohesive element of societies. It does so by challenging the foundation of

these values and by developing opposite "values" of its own. The projection of organized crime as the provider of employment and prosperity and its replacement of the central authority as the ruler, legislator and law enforcer can have deleterious effects on any society, regardless of its degree of advancement or its cultural foundation. By corrupting or intimidating legitimate authority, organized crime undermines fundamental institutions, rendering them inoperative not only because of their lack of effectiveness, but in the long term by discrediting the values that form their basis.

105. Organized crime generally involves two kinds of violence: violence used by the organizations involved to protect their territory and profits; and violence against people and property resorted to by individuals in order to pay for illicit products or services. There is, in addition and with reference to drug trafficking, the violence perpetrated by individuals under the influence of psychotropic substances. It has been estimated, for example, that the average heroin user commits 200 crimes a year to feed his habit.[49] The overall result, therefore, is that transnational crime feeds into violence in local communities, providing a vivid example of the global-local nexus in relation to transnational crime.

## C. The threat to individuals

106. At the individual level, security can be understood as the provision of a relatively safe environment, in which individuals and entities can go about their daily business without fear of violence or intimidation. They are able to pursue their right to life and property without being put at risk by the violent actions of others. In this context, transnational criminal organizations have had what might be called a profound geosocial impact. If individual security is inversely related to the level of violence within society - the greater the violence, whether through civil strife, factionalism or criminal activity, the less security is enjoyed by citizens - then transnational crime poses a serious security threat. As well as the violence that is a consequence of drug trafficking, violence is often perpetrated on individuals by criminal organizations. Some organizations, for example, traffic in people, especially women and children, treating them essentially as products and fundamentally depriving them of their human rights.

## D. The threat to national stability and State control

107. Transnational criminal organizations affect not only the host or recipient State but also their home State. In some cases, they provide a rival authority structure, or what sometimes appears as "a State within the State" based on a parallel or black market economy of very significant proportions. Their readiness to use force against the State and its agents challenges the State monopoly on the legitimate use of violence and imposes a level of harm that probably exceeds the damage resulting from the activities of most terrorist groups.

108. This has certainly been the case in Colombia and Italy. In both nations, home-based transnational criminal organizations have resisted efforts at State control and have resorted to extensive violence and terrorism. In Colombia, the Medellín cartel posed a fundamental challenge to the Colombian State and although, with the death of Pablo Escobar, the Colombian State has clearly emerged intact, the toll has been enormous. The Colombian judiciary has been decimated, the level of violence, at times, has reached proportions that are characteristic of civil wars, and Colombian political and economic life has been dominated by the threats posed by the narco-traffickers. The cartels have also been a threat to democratic values, killing journalists who were critical of their activities and corrupting the institutions of the State. Much the same kind of threat has been evident in Italy, where the Mafia has not only challenged efforts at control by launching similar attacks on members of the judiciary, but has proved to be a far more formidable enemy than such terrorist organizations as the Red Brigades. One of the reasons for this is that the Mafia has created an illicit but effective authority structure over its own territory and population.

109. Having gained enormously in power and wealth through its involvement in the heroin trade from South-East Asia and the cocaine trade from Latin America, the Sicilian Mafia, in particular, has used both corruption and violence. It has historically had very close links with ruling political parties and has infiltrated government not only at the local and regional levels but also at the national level. Moreover, throughout the 1980s the Mafia regularly killed magistrates, policemen, politicians, civil servants and trade unionists.[50] The assassinations of Paolo Borsellino and Giovanni Falcone represented a challenge to the Italian judicial system similar to the Medellín cartel's challenge to the Colombian judicial system. Although the challenge backfired, the events in Italy revealed the vulnerability of even advanced industrialized States to the threat posed by powerful transnational criminal organizations.

110. The challenge to State authority may be inescapable, as "each crime network attempts to build a coercive monopoly and to implement that system of control through at least two other criminal activities, corruption of public and private officials, and violent terrorism in order to enforce its discipline".[51] In other words, transnational criminal organizations, by their very nature, undermine civil society, add a degree of turbulence to domestic politics, and challenge the normal functioning of government and law. While they are particularly effective where government is already weak or unstable, criminal organizations add further layers of instability. Furthermore, as criminal organizations "realize the extent of their influence and power in the face of weak government or half-hearted efforts to control them, it is not too fantastic a leap to see these groups going beyond efforts merely to neutralize government enforcement but to become the Government".[52]

## E. The threat to democratic values and public institutions

111. Criminal organizations do not always confront the State directly. An alternative approach is to infiltrate and corrupt State authorities in an effort to neutralize efforts at law enforcement. The aim is generally to achieve a position in which the Government is acquiescent and takes no serious initiative to deal with the organization or to suppress its activities.

112. One way of achieving this is to enter into a tacit agreement to limit violence so long as the Government does not interfere with the group's economic enterprises. Another is to engage in corruption so that those who have the power or authority to initiate action against the criminal organization do not do so because of the benefits they obtain from the organization. The worst situation is one in which government officials and the criminal organization have a symbiotic or collusive relationship. In these circumstances, the Government is little more than a protective front for criminal activity, and, at the same time, a hostage of the criminal organization. This is an extreme case, but, as suggested above, can occur under certain conditions. It is consequently not a contingency that can be ignored.

## F. The threat to national economies

113. Unlike terrorist groups, the objectives of transnational criminal organizations are predominantly economic and not political. Moreover, it is has been argued that even illicit enterprises add to wealth in national economies, enhance levels of employment and provide a safety net against recession. According to the same agreement, transnational criminal organizations also offer opportunities for entrepreneurial and management skills that would otherwise be wasted. The profits from these activities are enormous and at least some of them are ploughed back into the local or national economy, usually with some multiplier effects. These positive results are only one part of the picture, however. The profits from transnational crime may also make economic management a much more difficult task, as they can encourage inflationary pressures, a distorted sectoral development, and spending on luxury products by a few when the greatest need is for a wider distribution of resources within the society.

114. Furthermore, in so far as they reduce the tax base, "black" economies tend to have a harmful effect on the legitimate economy and can undermine development efforts and efforts to ensure economic equilibrium.

## G. The threat to financial institutions

115. Transnational criminal organizations also pose a serious threat to the integrity of financial and commercial institutions at both the national and international levels. Infiltration of licit institutions, intimidation of their owners, distortion of their purposes, so that they no longer serve either the public interest or that of their shareholders, and reduction of management can lead to the misuse of funds.

116. Such a process is also central to the efforts of transnational criminal organizations to develop symbiotic relationships with both licit business and political élites. To the extent that this process succeeds, it is much more difficult for Governments and law enforcement authorities to deal with these organizations. The analogy of a virus gradually breaking down the immune system of the body politic is a striking and appropriate one.

117. The pollution of financial institutions is a serious activity that could undermine public confidence and have a serious long-term effect on global confidence in the economy. At the international level, the amount of money that is being laundered further erodes the capacity of Governments to manage, control and regulate the global financial system. At the same time there is also a danger of a backlash. In fact, the response to the challenge by transnational criminal organizations may be to take measures that could inhibit normal and legitimate financial activity. On the contrary, effective policies should resist the temptation of overregulation, thus avoiding measures that undermine growth and development.

## H. The threat to democratization and privatization

118. With the end of the cold war, many States have embarked on a difficult transition to the creation of democratic institutions and market economies. This dual transition has provided new opportunities for criminal activity, especially in areas where criminal justice systems are weak. Although there was initially some scepticism as to whether States in transition would be targeted by organized crime, partly because of the primitive stage of their economies, this assessment overlooked the fact "that organized criminal groups operate in many ways like transnational enterprises and invest in the potential of economies in transition. This potential is measured by such factors as natural resources and other criteria affecting likely economic growth. Furthermore, the risks involved in these investments are significantly lower, as successful efforts on the part of law enforcement and judicial authorities are less likely".[53]

119. Indeed, one of the problems is that, in cases where totalitarian systems were formerly in place, there is a considerable reluctance to do anything that appears to involve the reimposition of controls over the society. Moreover, efforts by friendly Governments to bolster up criminal justice systems and enhance law enforcement capabilities may be seen as an unwarranted intrusion into the country's domestic affairs and a violation of sovereignty.

120. Such tendencies could obstruct efforts at international cooperation. At the other extreme, however, is the possibility that there will be a significant backlash against the crime and corruption that have accompanied democratization and that the populace will opt for a hard-line Government that promises to restore order. In these circumstances, the potential for a reversal of the trend towards democratization is very considerable. The backlash effect of transnational crime, therefore, is not something that can be ignored. Indeed, there is an inherent danger that some Governments may use the threat from

transnational criminal organizations to establish restrictions on personal freedom and other fundamental elements of democracy.

## I. The threat to development

121. The threat posed by transnational criminal organizations to developing States has both a systemic and a personal impact. At the systemic level, organized crime undermines development efforts, in that scarce resources have to be diverted from other projects in response to criminal activities. In addition, the corruption that often accompanies transnational crime tends to weaken "the commitment of the citizenry to the sacrifices demanded by development policies", and to impair "the rational decision-making process required by public administration".[54] Corruption can occur at several levels, from the policeman on patrol to the highest level of government. Whatever the level, however, the result is invariably that it provides benefits to the few at the expense of the many. At the individual level, it is often the weakest and poorest members of society who are most at risk from criminal organizations. Indeed, for peoples who barely manage to subsist, transnational crime can have a devastating impact. Cattle theft and the transport of cattle across borders in parts of Africa, for example, have profound implications for those who depend on them for their very subsistence.

## J. The threat to global regimes and codes of conduct

122. Attempts to regulate the global political system and establish codes of conduct, principles of restraint and responsibility and norms of behaviour are increasingly being challenged by transnational crime and the criminal organizations that engage in it. Regimes to inhibit the proliferation of nuclear, chemical and biological weapons, as well as the technologies used for ballistic missiles, are highly dependent upon cooperation among suppliers and the ability to isolate rogue States that seek to obtain such capabilities.

123. Alliances of convenience, particularly between rogue States or pariah States on the one hand and transnational criminal organizations on the other, could do much to undermine the control regime. Once a trafficking network is in place and is functioning effectively, product diversification is easy. Organizations that traffic in drugs can just as easily traffic in technology and components for weapons of mass destruction. Whether the recipients are terrorist organizations or pariah States, the threat is obvious. If non-proliferation and other regulatory regimes are to function effectively in the future, therefore, it will be necessary to curb the activities of transnational criminal organizations.

# VII. CONCLUSION

124. Transnational crime and transnational criminal organizations pose serious and still not fully acknowledged threats to the dignity and safety of individuals to the sovereignty, security and stability of States, to the proper functioning of financial and commercial institutions at the national and global levels and to the order and stability of the international system. While these threats are very real ones in their home States and in the host countries in which they operate, failure to deal with the transnational criminal organizations from a global perspective only offers further opportunities for their growth and development. As was underlined by the Commission on Crime Prevention and Criminal Justice at its third session, in paragraph 5 of the annex to its draft resolution I,[55] adopted by the Economic and Social Council as resolution 1994/12, "... organized crime is, due to its nature, a pervasive phenomenon. Therefore, the international community should find ways to cooperate, not only in controlling current illicit behaviour but also in preventing the expansion of the phenomenon in new areas where defence mechanisms against the spread of such criminal activities are weak".

125. Organized criminal groups have already achieved enormous successes. As has been emphasized: "The resources at its disposal, the generation and maintenance of enormous wealth and power, the continuity and resilience of its structures and activities, and its continuing recruitment and replenishment of operatives, as well as the unscrupulous ways in which 'business' is conducted, enable organized crime to defeat criminal justice systems personnel."[56]

126. In these circumstances, it is essential that Governments initiate more stringent measures against transnational criminal organizations and engage in more comprehensive and effective cooperation. In particular, on the basis of the analysis made in the previous chapters, and drawing on the elements highlighted in the discussion document on the World Ministerial Conference on Organized Transnational Crime (see Economic and Social Council resolution 1994/12, annex), the following issues appear to deserve special attention for appropriate action:

(a) Identification and regular monitoring, through a global assessment, of the various and ever-changing problems posed by transnational organized crime;

(b) A focus on specific types of criminality that are considered particularly dangerous or alarming;

(c) A better understanding of the problems arising from differences that exist or emerge among various countries in the perception and evaluation of transnational organized crime;

(d) A study of the problems related to the different degrees of development of laws and regulations in individual countries;

(e) An examination of the problems arising from the expansion or reallocation of transnational criminal organizations to other countries where the defence mechanism is weak;

(f) A study of conditions that are conducive to the rise and growth of transnational criminal organizations, namely: social, economic and political factors; structural characteristics of organized crime; and organizational shortcomings and lack of resources in the control agencies;

(g) The gradual development of a common perception of the phenomenon;

(h) A global strategy for more effective inter-State cooperation.

127. While it is hoped that the Conference will take action on the above proposals, it should be pointed out that there may be no guarantee of success: the dialectic between law enforcement and organized crime is a continuing one of measures and countermeasures. Unless Governments pursue the issue much more vigorously than has hitherto been the case, with enough priority, determination and vision, as well as making the corresponding allocation of adequate resources, the danger persists that transnational criminal organizations will become ever more powerful.

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# NATIONAL LEGISLATION AND ITS ADEQUACY TO DEAL WITH THE VARIOUS FORMS OF ORGANIZED TRANSNATIONAL CRIME; APPROPRIATE GUIDELINES FOR LEGISLATIVE AND OTHER MEASURES TO BE TAKEN AT THE NATIONAL LEVEL

Background document

CONTENTS


| | Paragraphs | Page |
|---|---|---|
| INTRODUCTION | 1 | 2 |
| I. A SYSTEMIC APPROACH TO THE PROBLEM OF ORGANIZED CRIME | 2-5 | 2 |
| II. PREVENTIVE STRATEGIES | 6-14 | 3 |
| A. Reducing the opportunities for criminal activities | 7-9 | 3 |
| B. Reducing the vulnerability of legitimate industry | 10-14 | 4 |
| III. CRIME CONTROL STRATEGIES | 15-92 | 5 |
| A. Substantive legislation | 15-44 | 5 |
| B. Procedural legislation | 45-61 | 12 |
| C. Special programmes | 62-66 | 16 |
| D. Law enforcement methods and organization | 67-80 | 17 |
| E. Problems of coordination | 81-92 | 20 |
| CONCLUSIONS. TOWARDS AN INTEGRATED APPROACH | 93-100 | 22 |


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## INTRODUCTION

1. In the present report, different strategies and policies adopted at the national level to combat organized crime are analysed and existing legislation against organized crime, both criminal and regulatory, substantive and procedural, is examined, together with law enforcement mechanisms and special programmes. Considering these strategies and policies in a systemic approach as goal-oriented,* the key elements that have proved successful are outlined and two types of goals analysed: prevention and control.** "Preventive goals" are the goals pursued in order to reduce the opportunities for accumulating profits through illicit activities, and to reduce the vulnerability of societies and Governments to infiltration by organized crime. "Control goals" are the goals designed to weaken, disrupt and dismantle criminal organizations by prosecuting and convicting their members and tracing and confiscating the assets accumulated through, or used in, illicit activities. Drawing on existing United Nations documents, reports and resolutions,[1] as well as on the experience of some selected countries, this analysis offers elements for understanding the conditions and limitations of the policies adopted so far, and also suggests ways to enhance national capabilities for responding more effectively to old and new threats posed by transnational organized crime. The legislation reviewed was selected on the basis of availability, regional representation and the existence of a variety of measures designed to deal with organized crime.

## I. A SYSTEMIC APPROACH TO THE PROBLEM OF ORGANIZED CRIME

2. The goal of combating crime and the organizations that pursue wealth and power through criminal activities is often mentioned in official national and international documents, denoting an awareness of the problem and a will to take action. Shifting from the symbolic dimension to the reality of the situation in each country, many variables may influence the perception of the problem, the will to act and, hence, the effectiveness of the action that is taken. These variables include a number of objective elements, such as the level of resources available, the qualifications and professional skills of decision makers and of those who implement the action, in particular the criminal justice system personnel, including law enforcement agencies, as well as a number of subjective features or weaknesses, such as the level of corruption, or susceptibility to it, and other collusive relations between organized crime groups and some parts of the political, economic and bureaucratic system.

3. Owing to the inherent characteristics of organized crime, which is simultaneously engaged in providing illegal services and goods and in infiltrating the legitimate economy, the criminal justice system alone cannot successfully fight it. For these reasons, in the past few years, a range of "preventive" policies have been conceived and adopted, aimed, for example, at reducing the demand for illicit goods and deregulating or regulating some markets in order to reduce their vulnerability to infiltration by organized crime groups. These preventive policies, as opposed to crime control policies, relate to various sectors of the social and economic systems. The increased use of such policies (for example, the regulation of non-bank financial institutions as an anti-money-laundering policy), in

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*The main components of this approach can be found in E. U. Savona, "Strafrechtssystem und organisiertes Verbrechen", in Soziologisches Jahrbuch, vol. 3, 1987.

**For the theoretical framework of preventive and crime control policies see, E. U. Savona, "The organized crime/drug connection: national and international perspectives", in H. Traver and M. Gaylord, eds., Drugs, Laws and the State (Hong Kong, Hong Kong University Press), p. 126-127.

response to the organized crime emergency, calls for their close integration with crime control policies and, consequently, with the criminal justice systems.

4. A systemic approach designed to identify the most effective strategies against organized crime focuses on two elements: goals and policies. The more these are rationally linked, the more likely it is that the prevention and control system will be effective. The word "rationally" is used judicially to mean that a given society or country should select its priorities from among the desired goals, with a readiness to accept trade-off effects, and that it should base its choice on the policies that are least costly and present the fewest political and legal constraints, bearing in mind the fact that organized crime is simultaneously a domestic and an international problem.

5. In terms of strategy, the main question is to identify the most effective policies for preventing and controlling organized crime. The distinction between prevention and control is based on whether the policies pursued are defensive or offensive. Although they may appear to be closely interlinked in terms of the effects they produce, the difference lies in the intended goals. On the one hand, with respect to prevention, there may be a policy to reduce the demand for illicit goods and services, thereby limiting the opportunities for organized crime and preventing it from expanding. Conversely, the deregulation of, for example, the construction industry, or the introduction of a different type of regulation, has tended to make it much less vulnerable, preventing criminal organizations from securing a dominant, often monopolistic, hold on the market and making it much more difficult for them to infiltrate the legitimate economy. On the other hand, crime control policies are intended to disrupt the structure of criminal organizations. The two policies, to be effective, should be integrated into a systemic approach. In fact, when crime control policies are adopted without considering the advantages of preventive measures, and when general deterrence receives overwhelming attention and is viewed as the only form of prevention, the criminal justice system becomes overburdened and, therefore, less effective.

## II. PREVENTIVE STRATEGIES

6. When considering how to prevent or reduce the incidence and expansion of organized crime, the main assumptions are that: (a) organized crime is a derivative of a complex society - the more complex the organizational structure of a society becomes, the more the crime problem reflects this complexity, taking on varying and more sophisticated organizational patterns; (b) the criminal justice system is overloaded; some experts are questioning whether the economic costs of control policies have reached the point of diminishing utility - criminal law alone, and law enforcement in isolation, cannot succeed in dealing with the increasing complexity, flexibility and sophistication of large-scale organized crime operations; (c) as organized crime is oriented to providing illicit goods and services and to infiltrating legitimate activities through a variety of methods, including corruption and violence, preventive strategies need to be identified, which, while reducing the opportunities for crime, will also increase the threshold of vulnerability of the economic systems to infiltration. These strategies need to be integrated into - and not opposed to - crime control measures.[2]

### A. Reducing the opportunities for criminal activities

7. Strategies for limiting the opportunities for criminal activities involve different policies; for example the demand for illicit goods and services may be reduced, or an attempt may be made to make the goods and services monopolized by criminals legally available. These policies should be integrated, as their goal tends to be the same. On the one hand, there is the aggregated demand, while on the other, there is the demand for illegal goods and services only.[3] Since the problem is highly complex, it should be treated as such, taking into account the trade-offs and side effects that might occur. This aspect of

preventive strategy calls for a deeper knowledge and a thorough evaluation of its various implications and of their effects in different regions of the world.

8. The strengthening of the values of morality and legality must occupy a prominent place in preventive measures against crime. These values are prerequisites for building a social and cultural consensus against organized crime. The operations of organized crime groups, and their continued existence in territories where they are established and traditionally located, require a social consensus that helps to lower the risk attached to law enforcement activities and, in the process, facilitates the recruitment of new members. Organized crime groups achieve a consensus by redistributing resources and, consequently, creating incentives to employment in economically and socially depressed areas, and also creating disincentives through corruption and fear of violence. Building and maintaining high moral standards in political and administrative structures through respect for the law is the first commitment for effective action against organized crime. A culture of morality and legality has strong messages to convey to those who violate the law and to those who allow them to do so. The values need to be implanted, nurtured with extreme care, and passed on to new generations. As organized crime represents the organized violation of these values, it is essential to devise and implement comprehensive strategies to restore legality wherever it has been eroded, and to create "incentives for morality" for those who are exposed or susceptible to corruption. Measures for the protection of the criminal justice system against violence and the fear of violence are geared towards restoring legality[4] and codes of conduct in different areas of government and administration are geared towards restoring morality.

9. Policies that place emphasis on civic education can go a long way towards countering organized crime by building a social consensus against it, disseminating information and increasing awareness of the cost of organized crime to society. Here, the mass media play an important central role. The educational impact of messages transmitted by the media may, however, prove contradictory, since the emphasis is often on the spectacular or the sensational. Fictional crime stories and non-fictional accounts of crime are attracting increasingly wider audiences. Crime, violence, and corruption capture public attention in all parts of the world: the issue of reconciling the rights of information and freedom of artistic expression with the civic and social responsibility of promoting values of morality and legality is a very difficult one. The interrelationship between the media and crime, and their role in crime prevention, are truly challenging questions, which take on even more importance as time goes by.[5] Research and documentation on the experience gained thus far and increasing attention on the part of educational institutions are essential conditions for gaining the support of the media in this area.

## B. Reducing the vulnerability of legitimate industry

10. A second goal within the framework of preventive strategies is related to the need to reduce the level of vulnerability of legitimate industry to infiltration by organized crime groups. The assumption is that organized crime tends to infiltrate the legitimate economy for different purposes, such as: (a) laundering and investing the proceeds of crime; (b) acquiring respectability and social consensus for its members; and (c) controlling the territory where it operates in order to maximize economic and political advantages and minimize the risk of apprehension, arrest, and conviction (what is termed the "law enforcement risk"). Activities in the illegal markets and infiltration of legitimate business are not separate in the life and operations of an organized crime group. Opportunistic criminal organizations go where the money is, and "mono-task" organizations, such as those specializing in drug trafficking, become opportunistic when they have to invest the money produced by their criminal activities. For both, the infiltration of legitimate business is part and parcel of their activities. In order to reduce the vulnerability of industry, there must be more transparency in the economic system.

11. Successful policies involve a good chemistry of regulation and deregulation. For example, a number of countries have recently been strictly regulating the licensing of all economic activities, including banking and financial services, that could be infiltrated by organized crime. In particular, a request for banks to monitor transactions in an attempt to frustrate the money-launderers may help to identify money-laundering operations and trace criminal organizations. Furthermore, new regulations and codes of conduct for businesses and professionals can also help in the fight against money-laundering by keeping standards of transparency high and avoiding infiltration by organized crime.

12. Conversely, however, regulation through licensing may reduce competition and lead to some inefficiency in the system. Reduction of the vulnerability of legitimate industries has therefore to be balanced by forms of deregulation that increase competition among different enterprises. Some industries (for example building and construction) are particularly attractive to organized crime groups.[6] It has been a long-standing practice in many countries for organized crime groups to use violence and corruption to obtain some form of monopolistic control over the bidding procedure for public contracts, especially in the construction industry. In these cases, deregulation, which increases the level of competition, may be beneficial.[7] When promoting and facilitating competition among enterprises for public contracts, special attention should be paid to structuring the general framework of competition in such a way as to reduce the opportunities for and the risk of infiltration by organized crime groups. Such a policy also has the advantage of reducing the risk of corruption because of competitive prices. Corruption requires some form of monopolistic control in order to keep prices high and thus cover its costs.

13. As regulation and deregulation policies may have their trade-offs in terms of efficiency, they should be regularly monitored and adjusted. For example, regulation is effective when transparency is required in order to identify the actors in the market, while deregulation is effective in order to decrease the opportunities for criminal groups to establish monopolies. The optimal amount of regulation and deregulation must be based upon variables determined by the structure and the power of organized groups acting in given areas, as well as basic characteristics of the economy, including its size, strength, level of development and ability to be flexible and functional.

14. Preventive strategies and policies, although not sufficiently used in the past, have increasingly been explored in recent times as a means of action against organized crime. They are promising and cost-effective if carefully planned and implemented. As such, they represent the natural complement to traditional crime control policies.

## III. CRIME CONTROL STRATEGIES

### A. Substantive legislation

15. Substantive criminal law has adapted itself in different ways to the changes imposed by organized crime. The countries that have been exposed to the greatest threats from organized crime have been the first to react, by refining their legislation. The main changes relate to the criminalization of participation in the activities of criminal organizations and to the confiscation of assets acquired through, or used in, such criminal activities. In some countries, legislation allows the confiscation of crime proceeds through civil action against the proceeds themselves (in rem). This can be seen as a further expansion of the capability of the law in dealing with the changing trends of organized crime.

16. In many countries, the fact that an offence was committed as part of organized crime is frequently considered by criminal law to be an aggravating factor. In these cases, criminal codes define the

commission of a crime by an organized group as a qualifying feature. A distinction is made between criminal activities engaged in by organized criminal groups and participation in an organized criminal activity. The former relates to activities traditionally conducted by organized crime groups. In the latter, membership in an organized crime group is penalized. In general, however, many countries punish differently the criminal activity engaged in by organized crime, according to their particular perception of this problem. For example, in some countries, in addition to the traditional offences, other less typical offences are considered by legislation as organized crime activities, including crimes such as participation in "anti-revolutionary syndicates," or "loitering syndicates," and offences against "public order".

17. Although there are exceptions, there is an emerging consensus on organized crime activities in different countries' legislation. The following list drawn from the legislation of some countries with considerable cultural diversities can give an idea of the most recurrent offences considered by legislation as organized crime activities: in Germany, illicit narcotics trafficking, gang robbery, the receiving of stolen goods, trading in illicit firearms, extortion, management and procuring of prostitution, and illicit gambling; in Italy the distribution of illegal drugs, kidnapping for profit, extortion, fraud, loan-sharking and counterfeiting of public money or securities; Jamaica has a Dangerous Drugs Act, an Offences against the Person Act, a Larceny Act, a Forgery Act, a Firearms Act and a Corruption Prevention Act. Statutory law in England and Wales considers the following as criminal activities: various forms of fraud, false accounting, handling of stolen property, drug trafficking, forgery, living off the earnings of prostitution, and various forms of assault. Criminal activities according to the common law in England and Wales are: murder, manslaughter, kidnapping and false imprisonment. In the United States of America there is no general national law against murder, robbery, burglary or rape; instead there are 51 different sets of laws, in the 50 states and the District of Columbia that provide for such crimes. Federal law acts in cases of criminal activity affecting the country as a whole, proscribing a number of criminal activities commonly engaged in by organized crime, such as trafficking in illicit drugs, extortion by private or public persons, illegal gambling, and the interstate transportation or receipt of stolen property or property obtained by fraud.

18. Countries of the new Commonwealth of Independent States are now updating their criminal legislation against organized crime. A process of convergence through known and well established offences is developing in the republics of the former Soviet Union. The perception of organized crime as a serious problem is bringing the legislation of many of these countries into a process of modernization in which the old ideological offences traditionally associated with organized anti-revolutionary activities have been deleted. Banditry, possession of contraband, embezzlement of Government property, extortion, fraud, black marketeering, robbery, armed assault, premeditated murder, causing serious bodily harm, and drug-related crimes are the most frequent offences recognized by these countries. Their legislation, and also their criminal justice systems as a whole, are going through a deep process of change and modernization.[8]

19. A recent trend, which has substantially modified criminal legislation, is to consider "participation in an organized criminal association" as a crime. In many countries, this coincides with the crime of "conspiracy". Conspiracy is defined as the formation of a combination of two or more persons on a continuing basis for the purpose of committing an indefinite number of unlawful or criminal acts through the common use of all necessary means to carry out the concerted criminal plan. In order to be found guilty of criminal conspiracy, a defendant must be permanently aware of his membership in the conspiracy, and must always be ready to operate with the aim of implementing the pre-established plans of the conspiracy. Italian law has separate provisions prohibiting conspiracies to distribute illegal drugs. Because of certain characteristics peculiar to the Mafia culture, especially the duty of silence, known as omertà, conspiracy has always been difficult to prove in a trial. In view of these difficulties, Italy

enacted a law in 1982 introducing a new offence. This law makes it illegal to be a member of a Mafia-type association composed of three or more members. An association is defined as "Mafia-type" when its members strive to secure the management or at least the control of economic activities, grants, permits, public works, contracts, and public services to make illicit profits or to acquire other illegal benefits for themselves or others. This crime is separate and distinct from the crime of general criminal conspiracy or the crime of drug conspiracy.

20. Born out of emergency, this law has turned out to be a powerful tool against organized crime. The crime of "membership of an organized crime association" is based on the assumption that members of criminal organizations commit crimes. This assumption has made it possible to prosecute the top bosses of organized crime for this crime alone, on the basis of evidence provided by members of criminal organizations who have turned State's evidence. This crime has shown its potential in a long series of trials in which top Mafia leaders have been convicted and sentenced.

21. The Italian example of 1982 follows, albeit with many differences, the example set by the United States of America in the legislation of the 1970s. Although judicial interpretations of the United States Constitution did not allow the national legislature to prohibit mere membership in an organized crime group, the Racketeer Influenced and Corrupt Organizations statute, commonly known as RICO, makes it an offence for a person to participate in the affairs of an enterprise through a pattern of racketeering activity. The term "racketeering activity" is defined in the RICO statute with great detail, and encompasses virtually all serious criminal activity prohibited by either state or federal law, such as murder, robbery, drug dealing, fraud and other serious crimes listed in the statute. The Continuing Criminal Enterprise statute (CCE) is directed only against persons who are engaged in large-scale drug dealing, and requires, inter alia, that the defendant commit at least three violations of the drug laws while acting as a manager or organizer of five or more people. In addition to these statutes, the United States has a statute prohibiting general criminal conspiracies and a separate statute prohibiting drug-related conspiracies.

22. Other countries, which do not have the extensive organized crime groups with which Italy and the United States, for example, have long been familiar, have hesitated to follow the Italian and American examples, considering the category of "conspiracy crime" sufficient to deal with the emerging organizational typologies of organized crime. Law enforcement agencies, prosecutors and judges believe that including participation in a criminal organization as a specific crime has been a powerful tool in their hands for disrupting criminal organizations. The numerous indictments in the United States on the basis of the RICO legislation and the positive results of the implementation of article 416 bis of the Italian criminal legislation suggest that an extension of those categories to other national legislation may have definite advantages.

23. The success of efforts to combat the laundering of "black money" directly depends on the level of accessibility of law enforcement agencies to the activities of financial bodies. A problem here is that opening up the activities of financial bodies to outside scrutiny can affect their competitive position. The activities of organized crime may, however, undermine the entire financial market, thus affecting society as a whole. Furthermore, the money derived from organized crime often circulates through the same channels as legitimate funds. In view of this, it is vital for the banks to maintain records of the identity of their clients, and to cooperate with law enforcement agencies whenever there are suspicious deposits or other transactions. It may be necessary to strengthen mechanisms of control over banking operations and even to centralize information of this kind.

24. In recent years, many countries have introduced into their criminal laws the crime of drug-money-laundering, in accordance with the United Nations Convention against Illicit Traffic in Narcotic Drugs

and Psychotropic Substances of 1988 (E/CONF.82/15 and Corr.2). Because, however, drug trafficking is only one source of the proceeds of crime, there is a tendency in many Western European and North American countries, and in Australia, to expand the predicate offences from those related to drugs to virtually all serious crimes. In Central and South America and Asia, when money-laundering is criminalized as a separate offence its application is often limited to drug instrumentalities and proceeds. Eastern European countries are beginning to tackle these issues in the context of an overall re-examination of the law of property, banking regulations and criminal procedure. Few African countries have ratified the 1988 Convention and criminalized money-laundering.[9]

25. According to the conclusions of the International Conference on Preventing and Controlling Money-Laundering and the Use of Proceeds of Crime: a Global Approach, seven areas have been identified as implementation priorities for an effective anti-money-laundering global strategy. These areas are predicated on a number of assumptions about the presence of certain international and national enforcement mechanisms. Key among them is the concept that a net or web operates at three complementary levels - international, regional and national (which may be further divided into penal, cultural and administrative mechanisms at the national level). Political support, adequate resources, and high professionalism are essential conditions for effective action at all three levels. Governmental, multilateral, regional and international institutions must allocate adequate means and facilities to regulate or exercise successfully other types of control over highly sophisticated activities that may involve a large number of legitimate transactions, as, for example, in the case of wire-transfer technology.[10]

26. Corruption greatly facilitates the activities of organized criminal groups. In view of this, many countries have enacted special anti-corruption legislation. The fight against organized crime would be greatly assisted if all countries were to follow the anti-corruption recommendations adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in its resolution 7.[11]

27. Specific domestic criminal legislation dealing with the problem of corruption can be found in many countries. Some examples can help to highlight the categories used for criminalizing corruption. For example, in Germany, under the penal code, active or passive bribery of public officials, civil servants or employees, is a criminal offence. In addition, with respect to commercial transactions, German law makes it a criminal offence to bribe any employee in connection with that employee's official functions. Italian law has a wide variety of penal offences calculated to reduce the opportunities for, and the impact of, corruption. Italian law was recently modified to strengthen the provisions against corruption. It is a criminal offence for public officials to embezzle money or illegally enrich themselves. It is also a criminal offence for a public servant to abuse a position of power by soliciting or receiving a bribe in order to perform an act related to the duty of the office held by such official. The penal law also punishes a public servant who performs an act contrary to his official duties.

28. In Jamaica, the Corruption Prevention Act deals with corruption of public officials and covers the soliciting or receiving of bribes, the offering of such bribes, or acting as an intermediary to facilitate a bribe. There is no legislation covering bribery and corruption in private enterprises. Federal Mexican law establishes the following penal offences: wrongful exercise of public office, abuse of public authority, wrongful use of the powers of public office, extortion by a public official, intimidation by a public official, abusive exercise of a public official's functions, selling the influence of a public official, bribery of a public official, embezzlement of public funds, and unlawful enrichment.

29. The United Kingdom of Great Britain and Northern Ireland has a variety of criminal offences related to official corruption. Some of these are crimes created by common law, while others are governed by statutory law. In the United Kingdom, there are common law offences for misconduct in

public office, bribery or attempted bribery of a public officer, or accepting bribes when in public office either to act in a manner contrary to public duty or to show favour in the discharge of public functions. One of the earliest statutory offences in English law is the Sale of Offices Act of 1551, which prohibits the buying or selling of any public office concerned with the administration of justice. In 1809, these prohibitions were extended to all offices held under the Crown throughout the United Kingdom. Similarly, the Public Bodies Corrupt Practices Act of 1889 makes it an offence for any member, officer, or servant of a local governmental authority corruptly to solicit or receive any gift as an inducement or reward for performing any act associated with the office held by the official. In the private sphere, the Prevention of Corruption Act of 1916 prohibits a person who acts on behalf of another, for example, an employee, from accepting money to act to the detriment of the person for whom he is acting, for example, an employer.

30. United States law prohibits a public official of the federal or national Government from demanding, seeking or receiving a bribe. The same law prohibits anyone from giving, offering or promising a bribe to such public official. In addition, various laws limit the type of private business and legal relationships a former Government official may have with current Government officials after leaving office. Federal law also requires certain public officials to relinquish control of their financial investments to another person so that their actions in public office will not be influenced by even an unconscious desire to increase their own personal wealth. In addition certain individuals are required to file financial disclosure forms indicating all their financial interests. The Federal Government also has at its disposal many laws to battle corruption by local officials of the 50 states. For example, the RICO statute discussed in paragraph 21 above has been used to prosecute public officials who have used their office corruptly. Finally, all 50 states have statutes designed to fight corruption.

31. Preventive strategies against corruption have been adopted in a number of countries and specific mechanisms have been set up, such as the Independent Commission against Corruption in Hong Kong and in New South Wales, Australia. In the context of preventive strategies, codes of conduct have been elaborated and an increasing number of countries are implementing them.

32. Prosecution of corruption is difficult and the adjudication of the alleged offender even more so, especially when organized crime is involved, owing to the problems in obtaining evidence. Laws often create incentives for solidarity between corrupted and corruptor, both being punished equally. For these reasons, it is necessary to develop new sets of policies against corruption, from regulatory to criminal ones. Many regulations in areas sensitive to corruption need to be reshaped (preventive policies) by incorporating incentives for reporting corruption cases into the same legislation that punishes the corrupted officials and by creating (at a legislative or judicial level) a conflict of interest between the corruptor and the corrupted, in order to obtain evidence.

33. Corruption is part of the transnational dimension of organized crime and international corruption is growing as a related phenomenon. Many countries do not punish business executives who bribe foreign officials and, in some ways, they have legalized corruption practised outside the borders through a system of financial and tax advantages. The contradiction between domestic and international morality is thus a stark one. A special commission of the Organisation for Economic Co-operation and Development has drawn up recommendations dealing with international corruption, with a view to harmonizing the laws of different countries.[12] This is in line with the efforts of other institutions, such as the Council of Europe and the International Chamber of Commerce, which have recommended the adoption of international measures (treaties, conventions) as crucial instruments in the fight against corruption.[13] It is essential that all countries respond positively to these recommendations.

34. In addition to the traditional sanctions of imprisonment or fines that may be imposed upon conviction, consideration should be given to other sanctions designed to deter organized criminality. Some countries use judicially imposed limitations on the property, residence, association and daily activities of persons formally judged to be criminally dangerous, often taking past convictions into account. The granting of licences and public contracts may be conditional on the absence of criminal connections and proof of good reputation. Individuals and legal entities engaged in economic or financial activities involving great risk to the public, for example deposit-taking institutions or those dealing with toxic wastes, should be subject to adequately strict and enforced regulation to prevent wrongdoing, in particular since penal sanctions rarely provide proper compensation for victims.

35. Particular attention should be paid to the deterrence and punishment of misconduct by legal entities, such as multinational and other corporations. Individual executives may frequently be beyond national jurisdiction and personal responsibility may be difficult to establish. Criminal punishment of the entity itself, by fine or by forfeiture of property or legal rights, is used in some jurisdictions against corporate misconduct, and an increasing number of countries are including corporate crimes in their legislation. The establishment of criminal responsibility of a legal entity for corporate crimes is a powerful deterrent, intervening in the invisible or intangible good of the "reputation". The growth of economic crimes strictly connected with organized crime, such as frauds, calls for more attention to the activities of legitimate enterprises. These are the places where the infiltration of organized crime begins the process of polluting the legitimate economy and corporate sanctions can help to reduce the vulnerability of economic systems.

36. Crime committed for economic gain can be successfully countered by the forfeiture of such gains and of any other assets of the individuals and organizations involved. In some legal systems, great significance is attributed to the freezing, seizure, and confiscation of assets related to illegal activity. The need for more effective organized crime control makes it necessary to regard forfeiture as a strategic weapon, an economic method of discouraging organized crime activities and a means of eliminating the financial advantages of such antisocial activities.

37. The procedures for freezing, seizure, and confiscation need to be of broad scope and to permit the confiscation from the offender of a wide range of assets in order to eliminate all gain from the criminal activity. As a secondary benefit of such action, law enforcement agencies would be able to use confiscated assets or funds to further the activities of the agency. This can act as a powerful incentive. International agreements may also provide for the sharing of such assets.[14]

38. When dealing with organized crime, and on the basis of existing legislative provisions and practice, it may be appropriate to make any property constituting the proceeds of organized crime actions and any assets obtained with the help of these proceeds and any property used or intended to be used, in any manner or part, to commit or facilitate the commission of a crime by an organized group, including land, buildings and other private property subject to confiscation.

39. Consideration may also be given to allowing certain flexible evidentiary rules to be used in the procedures for confiscation of the assets of criminals involved in organized crime. For example, if it is proved that defendants had acquired assets during the time they were committing offences for which they had been convicted, and there is no other likely method by which they could have acquired the assets, then it may be reasonably inferred that the assets are the proceeds of crime. In the legislation related to confiscation, the liberty and property rights of individuals should be protected, in accordance with national constitutional principles and existing international instruments.

40. As may be seen from a recent analysis,[15] there is a marked convergence of country policies on asset forfeiture and confiscation of the proceeds of crime, which appear to be more widely accepted than the criminalization of a money-laundering offence per se. In the numerous countries where there are no specific money-laundering provisions, it is possible to find confiscation provisions deriving from more generic laws dealing with stolen property or the proceeds of a criminal act. Some examples drawn by the legislation of countries which have recently considered this issue can help in understanding recent trends. German law allows for both forfeiture and seizure of property under certain circumstances. A defendant may forfeit any financial advantage which he gained through the offence or as a result of his unlawful act. Forfeiture applies not only to tangible assets but also to accrued financial advantage. German law establishes various mechanisms to provide for the rights of third-party claimants to the property who are not involved in the activity. The concept of forfeiture allows property accrued in violation of law to be forfeited even if the defendant did not show the required intent to commit a criminal offence. If the defendant has violated a law for which forfeiture is a penalty, then the property acquired through the violation of that law is subject to forfeiture. In addition to the legal concept of forfeiture, German law provides for seizure of tangible assets which are acquired through the defendant's intentional commission of a criminal offence, or used by the defendant for the purpose of committing that offence, or in preparation for the commission of the offence, or intended by the defendant for use in intentionally committing a criminal offence. The principle of proportionality applies to both seizure and forfeiture, requiring that the seizure or forfeiture of the asset be in proportion to the extent of the harm caused as a result of the illegal act.

41. Italian law provides for two types of forfeiture. The first type is of a preventive nature; it allows a court to order the seizure of assets belonging to a person if that person's lifestyle is inconsistent with the person's apparent or declared income. In that event, the person is required to explain the nature and source of the asset. If the person can articulate and prove a lawful basis for his possession of the asset, then he is allowed to retain it. If, however, the person is unable to provide the authorities with an explanation as to the lawful acquisition of the asset, the court may order the asset forfeited. The second type of forfeiture or confiscation involves assets which have been used to commit a crime or are the products or profits of such crime. Confiscation is mandatory upon a defendant's conviction of a criminal offence related to his use or acquisition of the property in question.

42. In Jamaica, in addition to the forfeiture under the Exchange Control Act, the Dangerous Drugs Act provides for the confiscation of conveyances, for example boats, aeroplanes and motor vehicles, used in the commission of the offence. Particular attention is given to the forfeiture of assets acquired from the illicit trafficking of drugs and psychotropic substances. Mexican law permits the forfeiture of the instruments used to commit a criminal offence. The Mexican Constitution, however, prohibits confiscation, which is understood to be a non-judicial seizure of property. In the United Kingdom, confiscation of drug proceeds is allowed for the entire value of the drug proceeds, including property transferred to third parties as a gift or sold for significantly less than its full value. In addition, instrumentalities of drug trafficking crimes may be forfeited.

43. In the United States, the following laws allow the confiscation of assets: the RICO statute, the CCE statute, the anti-drug laws, and a wide variety of other federal criminal statutes. The drug law permits the forfeiture of the proceeds and instrumentalities of drug trafficking. If the Government proves that a defendant violated the drug laws and acquired property during the time he was committing the drug offence for which there is no other likely source of funds, then it is presumed that such property was acquired with drug-related money even though that fact cannot be specifically established. The defendant, however, is free to offer evidence showing that the property was obtained in a legal manner. In the former Soviet Union, confiscation of property was permitted only if specifically provided for by statute. In general, confiscation of property is allowed for all types of specified profit

oriented crime. The confiscation law exempts property needed by the defendant or his dependents, for example, a residence, foodstuffs, and money totalling the monthly salary of the criminal.

44. The main sanctions applied to cases of organized crime are imprisonment and confiscation of assets derived from crime. The latter has acquired growing importance as a necessary complement to anti-money-laundering policies, drawing on the experience of countries that have imposed it. Drawing on that same experience, other countries could be encouraged to introduce such sanctions into their legislation. Modifications in property laws may, however, be necessary, just as it is necessary to ensure the efficient functioning of legal enterprises that are objects of confiscation.

## B. Procedural legislation

45. On the basis of a review conducted by the International Seminar on Organized Crime, held at Suzdal, Russian Federation, from 21 to 25 October 1991 (see Economic and Social Council resolution 1992/23, annex II), it would seem that most countries have procedural provisions empowering the courts, prosecutors, investigators and the police, as appropriate and in accordance with their respective competencies, to carry out investigations whenever there are indications of a crime. There may, however, be discretionary powers that allow the law enforcement authorities to decide whether or not to investigate or to initiate prosecution. Where this discretion exists, it is often used by investigators when working with informants from criminal circles. Its use requires a high degree of professional responsibility on the part of the investigators. Legal systems do recognize the possibility, in some cases, of granting minor offenders immunity from prosecution, in return for disclosing identities of leaders of organized criminal groups.

46. The criminal laws of many countries specify the elements that must be established to prove an offence. These may include: the commission of an offence; the defendant's guilt and motives for the crime; any aggravating or extenuating circumstances, including the defendant's record; and the nature and amount of damage inflicted by crime. The evidence is evaluated by the official performing the investigation, by the prosecutor, and finally by the court. In practice, there is no difference in the standard of evidence required in respect of crimes committed by organized crime groups compared with other crimes. Deciding on the verdict remains a task for the appropriate authority exercising judicial powers over serious offences committed by organized crime. In doing so, the principle of the presumption of innocence must be followed.

47. The experience of many countries suggests that there are advantages to be gained by using information obtained with the help of electronic surveillance, undercover agents, controlled delivery, the testimony of accomplices and similar methods of preliminary investigation for the collection of evidence. The acceptability of such methods is limited by the strict observance of legal requirements and criminal procedural principles. The use of the testimony of accomplices can be extremely helpful in prosecutions involving organized crime. Careful assessment and use of such testimony can enable law enforcement authorities to penetrate the layers of secrecy that are characteristic of criminal organizations and that would otherwise protect them from prosecution. Some countries have also found it advantageous to enact legislation obliging witnesses to testify truthfully and providing for sanctions if they refuse to do so.

48. The restriction of the liberty of the defendant prior to conviction is frequently allowed by the law when there are specified grounds. The main form of such restriction is pre-trial incarceration. This can be ordered if it is appropriate, in view of the seriousness of the case and the possible sentence upon conviction and for other reasons, for example because the defendant has tried to escape or because he or she may seek to evade justice or conceal evidence, or that he or she may commit further offences or

pose a threat to witnesses, or otherwise be a danger to the community. If there is a bail system, the defendant who has been accused of an offence could be released upon the payment of a certain sum of money, unless the judicial authorities believe that pre-trial incarceration is necessary. The question whether a criminal may be released on bail should normally be a matter for a judicial or other appropriate body but the financial resources of those engaged in organized crime are often such as to make release inappropriate, since forfeiting bail may be considered as an acceptable cost of their business. The appropriateness of granting conditional release and other benefits of law in cases of organized criminality must be evaluated, taking into account the criminal record of the accused and the severity of the accusation.

49. Two questions appear to be of particular relevance in procedural legislation: (a) mandatory or discretionary principles of prosecution; and (b) issues of proof. Some examples drawn from existing legislation can lead to a better understanding of the way in which these questions are considered by domestic laws. In Brazil, police and investigative authorities are allowed some discretion with regard to whether to arrest or proceed with an investigation of an offence known to them. No discretion is granted to prosecuting authorities if there is sufficient evidence to bring charges against a defendant.

50. Under German law, both the police and the Department of Public Prosecutions have the duty to institute criminal proceedings if there is sufficient evidence to show that a person is guilty of a criminal offence. Thus, Germany follows the principle of mandatory prosecution. Italy also follows the same principle. The police must report to the prosecutor, within 48 hours, any crime that has come to their attention. Similarly, the prosecutor is required to initiate criminal proceedings if the evidence so warrants. However, under certain circumstances, the prosecution may request from the appropriate judicial authority a reduction in the charge or reduced punishment, in exchange for the defendant's cooperation in a criminal investigation.

51. In Jamaica, some discretion is allowed to enable the police to overlook minor offenders in order to further their investigations of major offenders in organized crime. The final authority for prosecution is the Director of Public Prosecution, who is a constitutionally independent officer, not subject to the directions of anyone. The Director may determine at any time to commence a prosecution, take it over or discontinue it. In the United Kingdom, the decision whether to investigate a report of criminal activity rests entirely within the discretion of the chief officer of the force responsible for conducting the investigation. Crown Prosecutors have discretion at all the various stages of prosecution, including the power to terminate proceedings or offer no evidence. This discretion is exercised in light of the Code for Crown Prosecutors, which details the manner in which crown prosecutors perform their duties. In the United States, the investigative agencies have discretion whether to investigate or report a criminal offence to a prosecutor or judge. This discretion is frequently used by investigators to develop sources of information regarding criminal activity. A prosecutor has discretion not to bring charges against a potential criminal defendant, and to enter into plea agreements asking the court to impose a reduced sentence based on the defendant's cooperation. This discretionary authority is frequently used, and is an important tool for obtaining evidence concerning other criminal activity; it is, however, to be exercised in accordance with appropriate guidelines.

52. Related to the issue of proof, the first problem is the burden of proof. There is a general convergence, and it is part of legal tradition, that the burden of proof lies upon the State. The prosecutor should be able to prove guilt backed by strong evidence (beyond reasonable doubt in the United Kingdom and the United States). The presumption of innocence until conviction is universally recognized as an essential condition of legality.

53. With regard to evidence-gathering, electronic surveillance has been one of the most powerful technologies for collecting evidence. The difficult balance between the right to privacy and the need for law enforcement to trace alleged criminals characterizes the definition and the implementation of this powerful technology. Domestic laws authorizing or denying such use are influenced by this debate. Systems of balance have been found in many countries, which have used this technology successfully against organized crime groups. For example, Brazilian law allows electronic surveillance after the requesting officials receive judicial authorization. In Germany, electronic surveillance, along with the other forms of investigation, are within the competence of the investigatory authorities and are still considered permissible. Legislation specifically addressed to electronic surveillance and other forms of sophisticated criminal investigations provides that evidence produced through such methods is admissible with some limitations. Under current legislation, the admissibility of these methods is limited by a strict interpretation of the constitutional law relating to proportionality with respect to criminal investigations, and also by other principles of constitutional law, together with basic principles of law and justice. Investigative methods that affect the domain of individual personality to any considerable extent, or methods that are employed in secrecy, are only admissible in connection with serious offences. In addition, the Government must establish that other investigative procedures less injurious to the persons concerned are considered.

54. In Italy, in cases concerning serious offences, telephone wire-tapping and interception of telephone communications are allowed. The order for such surveillance is issued by a preliminary investigations judge at the request of the prosecutor. In urgent cases, the prosecutor can order the interception by issuing a decree stating all the reasons for such a measure. The prosecutor must, however, submit within 24 hours a written application to the preliminary investigations judge for such wire-tap authorization. The judge must confirm or deny the request within 48 hours. In addition, the anti-Mafia law provides for preventive telephone tapping. Wire-tapping must be authorized by the public prosecutor and carried out in compliance with the relevant statutory provisions governing such surveillance. Information obtained under this law may be used to develop evidence, but may not itself be offered as proof at trial. In Jamaica, the law does not allow the use of electronic surveillance for collecting evidence but the possibility of enacting such legislation is being considered. The United Kingdom allows electronic surveillance evidence to be admitted under the Police and Criminal Evidence Act of 1984. The decision to use electronic means in an investigation is contained in non-statutory guidelines, which require investigators to obtain approval from appropriate authorities before beginning the surveillance.

55. In the United States, electronic surveillance is allowed if an order is obtained from a judge. The requirements for obtaining such an order are governed by statute. If authorized by a judge, a suspect's conversations with other individuals may be monitored without the consent or knowledge of any of the parties to the conversation. It is a serious crime to conduct electronic surveillance without a court order. In addition, electronic surveillance conducted in an improper manner will not be admitted in evidence under the exclusionary rule of evidence, to deter misconduct by law enforcement officials. No court authorization is needed, however, for an undercover agent or consenting witness voluntarily to record a meeting with the subject of an investigation.

56. The effectiveness of such technology is limited by rapid changes in communication technology. Criminals are adapting their methods to this technology, frequently using encrypted phones and faxes, thus making any kind of interception by law enforcement agencies impossible. The development of crypto-technology is placing serious strains on electronic surveillance. It is a moot point whether only one standardized type of crypto-technology should be available, giving law enforcement agencies the capacity to intercept it, or whether, owing to market pressures, different crypto-technologies can be used, making interception more difficult.

57. Differences are also evident in the use of undercover agents and controlled delivery, new powerful instruments that are being used successfully against organized crime. Some countries do not allow the use of undercover agents, others place some restrictions on their use in terms of the crime involved (for example only for drug trafficking), while others prohibit incitement to commit a crime. In many countries the court wants to see clearly that no entrapment was initiated by the police. Some countries allow the controlled delivery and sale of drugs to an undercover officer, and in some limited cases allow an undercover officer to deliver drugs to another person.

58. Positions differ with regard to testimony by accomplices. Some countries permit the testimony of such witnesses. Others specify that testimony of co-defendants charged with the same crime, or the testimony of defendants in a related case, cannot be admitted unless they have been irrevocably cleared of charges. In other countries, the court weighs the testimony of an accomplice witness with greater caution and care than that of an ordinary witness, because the accomplice could be motivated to falsify his or her testimony.

59. With reference to evidence gained as a result of confidential informants, some countries prohibit the use of anonymous testimony in judicial proceedings. Confidential informants can, however, be used by the police in conducting investigations into criminal activity. Other countries provide that anonymous reports cannot be used at trial. Documents containing unsigned statements can neither be admitted as evidence nor otherwise used. Information supplied by confidential sources can nevertheless be used by the police for investigative purposes and may provide the probable cause needed to justify a physical search or electronic surveillance, the results of which may be admitted in court.

60. Within certain limits, countries are veering towards admitting enforced testimony. In Germany, if a witness declines without lawful reason to make a statement, the court will declare him to be in contempt of court and impose a disciplinary fine. In Italy, the witness is required to appear before the judge and comply with the judge's orders relating to proceedings, as well as to answer all questions by telling the truth. If the witness has been regularly summoned but fails to appear without reasonable excuse or justification, the judge can order the witness to be forcibly escorted into court. In the United Kingdom, witnesses can be compelled to attend court, but they generally cannot be obliged to make a statement in advance. There is a requirement for persons with knowledge of terrorism offences to disclose that information to the police. In the United States, the Fifth Amendment to the Constitution provides that no person shall be compelled to be a witness against himself. However, a federal prosecutor, with the written finding of a senior official in the Justice Department that it is in the interest of justice to secure the testimony of a reluctant witness, can obtain a compulsion order from a federal judge, who orders the witness to testify. This order must also provide that nothing the person says while testifying can be used against him or her as evidence or to develop evidence against the witness. If a person still refuses to testify, he can be incarcerated for refusal to comply with the court's order until he testifies, for up to a maximum of 36 months, or prosecuted for any false declaration.

61. The presence of organized crime has led to important changes in the criminal law procedure of many countries, particularly those, such as the United Kingdom, that are sensitive to the political version of such crime, namely terrorist activities. There are factors for and against two models of mandatory and discretionary criminal action and it is difficult to make a comparative evaluation without considering the political and social framework in which the criminal justice system operates. Discretionary systems are more efficient but can produce more inequalities. Mandatory systems theoretically provide a better guarantee of equal rights and reduce the possibility of discrepancies, but they may be less efficient. This inefficiency can, in the end, lead to a practical discretionality, which may be worse than discretion established as a principle by law and properly regulated.

## C. Special programmes

62. Provisions that ensure the protection of witnesses are of great importance in the fight against organized crime.[16] Some national systems of criminal justice have paid close attention to this question, and have enacted legislation providing for the security of witnesses. In particular, attention has been focused on measures to protect witnesses by allowing for them to move to a new place and change their identities and providing physical protection if a threat has been posed by a defendant or the defendant's associates. This can necessitate making arrangements to provide the witnesses with documents enabling them (and members of their family) to establish a new identity, providing temporary housing, arranging for the transportation of household furniture and other personal belongings to a new location, making subsistence payments, helping the witnesses to obtain employment, and providing other necessary services to help the witnesses to lead a full and normal life. In considering the type of protection to be provided, the financial circumstances of a country must be taken into account. In addition, provision needs to be made for the safe custody of incarcerated witnesses, including separate accommodation. Legislation may also be necessary to deal with the practical problems that may arise in connection with relocated witnesses, such as child custody disputes and crimes committed under their new identity.

63. These programmes are usually included in appropriate legislation, which also deals with the protection of confidential sources and the protection of accomplices. For example, in China, the identity of an individual who makes a report concerning a criminal violation is protected throughout the investigation, unless that individual consents to have his or her identity disclosed. Informants who cooperate with the police are also protected. In Germany, there is no specific legislation permitting the relocation of witnesses and a change in identity. German law does, however, provide various other means of protecting witnesses; for example, the police authorities may take security measures for the protection of a witness within the framework of their normal duties. There are no similar provisions for protecting criminal informants who do not agree to testify in court. Italy has recently enacted legislation specifically providing for the protection of witnesses. This legislation includes provisions for their relocation. The programme is administered through a special central protection service within the Department of Public Security of the Ministry of the Interior and through an office under the National Anti-Mafia Prosecutor (Procuratore Nazionale Antimafia). Informal measures also exist for the protection of informants by the police.

64. Although the United Kingdom does not have any legislation regarding the protection of witnesses, the police can provide for the protection, relocation and change of identity of witnesses who have given evidence in criminal trials and are known to be in danger. These measures are available to accomplices who testify against the defendant, but there are no provisions for the protection of informants. The United States operates a witness protection programme, established by legislation, whereby the relocation of witnesses and the creation of new identities are authorized. This programme, which is governed by detailed rules and procedures, authorizes the following services, in addition to simple guarding of the witness and family: (a) issuing documents to enable the witness to establish a new identity; (b) providing temporary housing for the witness; (c) providing for the transportation of the household furniture and other personal goods to a new location; (d) providing subsistence payments to the witness; (e) helping the witness to obtain employment; (f) providing other necessary services to enable the witness to become self-supporting. In addition to the formal witness protection programme, investigative agencies can also provide some assistance in relocation, for example in the form of cash payments. Finally, some informal procedures exist for the protection of informants who do not give evidence in court.

65. Witness assistance programmes have been key issues in the fight against organized crime in countries where the problem is widespread and the number of cooperative accomplices is consequently

very large. The quality of their contribution and of the evidence they make it possible for the authorities to collect depends also on the quality of protection (physical, psychological and economical) that is provided. Questions arise about the most suitable agency for administering these programmes. The dangers entailed in a close relationship between the police or the prosecutor and cooperative accomplices are being discussed in countries where these authorities are in charge of protecting cooperative accomplices and witnesses. An independent authority may be the best way to manage the matter.

66. Another programme in the fight against organized crime is that which compensates the victims of acts of organized crime (for example, extortion). Such programmes are designed to increase resistance to the infiltration of organized crime into the legitimate economy, which sometimes starts as extortion, and to increase the cooperation of citizens who have been subjected to this kind of pressure.

## D. Law enforcement methods and organization

67. If effective action is to be taken against organized crime, the law enforcement authorities must be able to collect and analyse systematically all relevant information from all appropriate sources in order to produce and use intelligence for both strategic and tactical purposes. The methods employed for the collection and use of such information should be authorized and controlled by legislation. Even so, it is important that the technical facilities and techniques that law enforcement authorities are allowed to use should always be sophisticated enough to enable them to match those employed by organized crime.

68. The production of intelligence requires the collection, processing and analysis of a wide range of information on the persons and organizations suspected of being involved in organized criminal activity, even including information that at first sight is not directly related to organized crime. There may be no rigid borderline between strategic and tactical intelligence, but the main aim of tactical intelligence is to help in the planning of particular law enforcement operations and to identify the sources for obtaining the evidence that will make it possible to arrest a suspect and to prove guilt. Analysis by trained personnel greatly increases the effective application of law enforcement intelligence. It is important to note that there is often a need to continue the collection of information throughout all the relevant stages of the legal process. Intelligence should always be collected in such a manner that even years later it can be retrieved and used as evidence.

69. Where resources permit, computerized information systems can be of particular benefit in combating organized crime.[17] Computers are used to store information on the various persons and organizations suspected of being involved in organized crime, as well as information about crimes already committed or being planned. Where there are different law enforcement agencies collecting information, appropriate arrangements need to be made to permit a regular exchange of information between local and national (or federal) authorities, and between local police forces in different areas. Careful attention must be paid to the compatibility of computerized systems, and the convertibility of manual systems to computerized ones. The creation of a centralized data bank may be appropriate in some countries, the information being shared internationally on the basis of mutual agreements. Furthermore, technical assistance in setting up and organizing criminal intelligence systems is advantageous to both developing and developed countries.

70. Particular attention has to be paid to information from confidential police sources, including prisoners. Important intelligence comes from other sources as well, however, and in particular from financial and taxation bodies. When permitted to do so, they can be of great assistance, as they frequently find themselves directly in contact with organized groups seeking to make use of the proceeds of crime. Legislative inquiries and official and public records may also be of value. An essential resource in the effective investigation of organized crime is the capability to collect, and present in an

intelligible manner as evidence, complicated financial and commercial information. The collection of information concerning forfeitable assets permits the forfeiture of such property and makes it available for State use.

71. The infiltration of organized crime into legal enterprises and any contacts it may make in political circles can create a superficial respectability, facilitate corruption and be used by criminals to hinder investigations of their activities. Therefore, law enforcement agencies, when collecting data on the criminal activity of a particular person or organization, need to obtain the most comprehensive intelligence picture possible. A range of measures have been adopted. These include measures: (a) to develop intelligence, through informants, searches and other techniques, in order to uncover large-scale organized criminal enterprises; (b) to determine the factors and conditions facilitating the development of organized criminal activity; (c) to provide for the centralized collection, storage and analysis of information (including the use of criminal organization charts) and for the tactical application of such information; (d) to ensure cooperation with law enforcement authorities and other bodies involved, using a multi-agency approach; (e) to study other countries' experience of organized crime control; and (g) to develop on the basis of the above factors a systemic approach to criminal policy, based on appropriate legislation, proper allocation of resources and mobilization of public support.

72. To lift the veil of secrecy, conspiracy and fear-induced silence of possible witnesses, as well as to understand how the criminal groups function, who directs their activities and where their illegal income is channelled, police bodies generally collect intelligence and evidence by using undercover methods. With appropriate safeguards, secret operations directed against organized crime can be conducted effectively through the use of undercover agents and informants, often in conjunction with the use of technical facilities to intercept and to record conversations, the contents of which may facilitate the disclosure of crimes. These techniques may include wire-taps, surveillance by means of closed circuit systems, night vision equipment, and video and audio recording of ongoing events. In some jurisdictions, such technical surveillance may be used only in cases when other mechanisms of investigation have failed, or there is no reason to think that they will lead to the desired results, or where other mechanisms are too dangerous.

73. If extreme care is exercised with regard to the reliability of accomplices or their testimony, and due account is taken of the severity of their offence, the cooperating witnesses for the prosecution may be a valuable means of infiltrating organized crime groups. Mitigation of sentence or even dismissal of charges, where possible, can motivate lesser criminals to assist in investigations of organized crime. The incorporation of such procedures into national legislation or recognized practice, together with the protective services previously discussed, has served to attract such cooperating witnesses.

74. The ways in which law enforcement agencies operate are related to three basic issues: (a) the management of intelligence; (b) the strategies for targeting the objectives; and (c) the techniques for gathering intelligence and evidence.

75. With reference to the management of intelligence, countries have different forms of organization, depending also on their political structure. In Germany, for example, each individual state in the Federation has a structurally similar command post, which collects and coordinates intelligence information related to organized crime. These individual offices are linked together with the Federal Criminal Investigation Department headquarters. In Italy, intelligence is collected by the three major police forces in Italy, which are the State Police, the Carabinieri and the Customs Police and by the new Anti-Mafia Investigative Board (Direzione Investigativa Antimafia) expressly created for intelligence gathering and operations against organized crime. Each of these police forces has a local office to investigate criminal acts. The intelligence gathered by these organizations is stored in a data-processing

centre within the Office of Police Coordination and Planning of the Ministry of the Interior. The data-processing centre runs the collection, classification, storage, and dissemination of the intelligence that has been collected and submitted by the investigative agencies.

76. The Jamaican police force has an organized crime unit whose function is to collect and analyse intelligence information related to organized crime activities. This information is gathered from a variety of sources, including contacts the police force has with investigative agencies in other countries. The information is analysed to identify the subjects who are engaged in criminal activities. In the United Kingdom, criminal intelligence gathering is conducted, processed and analysed by the National Drug Intelligence Unit, nine regional criminal intelligence offices, and the Metropolitan Police. A recent development is the creation of a national criminal intelligence service.

77. In the United States, the Federal Bureau of Investigation (FBI) is the primary investigative agency responsible for investigating organized crime activities. In addition, other investigative agencies, such as the Drug Enforcement Administration, the Internal Revenue Service, the United States Customs Service, the Immigration and Naturalization Service, and other federal, state and local investigative agencies, play an important part in attacking the problem of organized crime. The intelligence information gathered by these organizations is used in formulating a national organized crime strategy, which is developed from a variety of sources.

78. With reference to targeting strategies, in Brazil, for example, individuals are targeted for investigation mainly as a reaction to information received by the police. In China, in order to prevent the spread of organized crime, industrial companies, schools and street organizations closely monitor possible criminal elements and educate them to prevent them from falling into criminal ways. In Germany, the coordination of investigations is undertaken by the Federal Criminal Intelligence Division (BKA) headquarters, which informs the Public Prosecutors's Investigative office of its findings if that investigation reveals concrete suspicion of criminal activity. The BKA is charged with acquiring information relating to the fundamental structures of organized crime for use in determining proper investigative strategies with respect to those organizations. In Italy, the data base in the Ministry of the Interior is used to develop investigative strategies. The directors of the investigative agencies at the local and central level are responsible for the implementation of the investigative strategies developed through the analysis of the information contained in the data base. In Jamaica, decisions to target individuals or groups are usually based both on reaction to information received and on intelligence reports arising out of proactive plans.

79. In the United Kingdom, targeting strategies are determined at the senior level by using the intelligence collected through the process described in paragraph 76 above. Targeting may be a reaction to information received, but more probably entails a detailed evaluation of intelligence gathered and the preparation of a proactive investigative plan by the police force and intelligence officers for the relevant force or agency to implement. Prior to any targeting, the operational plan ensures that all information is researched, as far as is practically possible. The United States uses long-term sustained investigations and resulting prosecutions to attack the prominent organized crime groups which pose a significant threat to the country. This is a proactive as opposed to a reactive approach and is based on intelligence-gathering efforts identifying major criminal conspiracies.

80. With reference to intelligence and evidence gathering, many countries use a wide range of techniques, such as searches, informants, financial investigations and physical surveillance; electronic surveillance of telephone conversations and other types of telecommunication; undercover operations; debriefing of convicted persons; open sources, for example, public records, the media and articles in the press; liaison officers; embassies and missions abroad; foreign law enforcement intelligence agents; and

fortuitous discoveries made during routine investigations. Patterns for collecting and analysing strategic intelligence have been developed in many countries. An important example is the FBI "enterprise theory", whereby the organized crime enterprise itself becomes the focus of the investigation. While individual criminal acts are investigated, the investigation seeks to link the acts to an overall portrait of the organization's criminal activity and in this manner attack the entire criminal organization as opposed to isolated criminal acts committed by members of that organization. The RICO statute is a critical tool in the successful investigation and prosecution of criminal organizations.

## E. Problems of coordination

81. Organized crime may be investigated by a variety of law enforcement agencies with different jurisdictions. It is essential to ensure that close coordination is maintained between central and peripheral structures as well as effective liaison between intelligence and operations. In countries with federal structures, it is also essential that effective mechanisms be established to ensure coordination of jurisdiction, intelligence and operations among federal policing agencies and those of other governmental units. While coordination within and between agencies and units is a condition for successful action against organized crime, a clear delineation of jurisdiction contributes to a harmonious and effective working relationship.

82. When resources permit, the formation of one or more specialized units dedicated to the investigation of organized crime could be very useful, particularly in the areas of corruption and money-laundering. The danger must be recognized, however, that exclusive jurisdiction over an area of investigation may create susceptibility to corruption, and appropriate safeguards should be developed.

83. Within any individual law enforcement agency, a strictly centralized senior management system, which can scrutinize all aspects of investigations and monitor their course, is necessary to ensure that all investigations are conducted in accordance with national laws and with a proper respect for individual freedoms. It is important for senior management officials to take into account the necessity of ensuring financial, logistical and moral support.

84. Investigators, and in particular those leading the investigation, should be selected on the basis of their ability, experience, moral qualities and dedication. The importance of basic and in-service training, not only for the police but also for prosecutors and judges, should not be underestimated. Two keys to success are specialization and a high degree of professionalism.

85. The relationships between investigative functions and prosecutorial and judicial organs vary markedly from one legal system to another and in any system, smooth coordination among them is an essential condition for effectively combating organized crime. Obviously, due respect must be paid to maintaining the proper relationships between the functions, keeping in mind the importance of preserving the independence and impartiality of the judiciary, as well as the proper role of defence lawyers.[18]

86. Regarding specific patterns of coordination, in Germany, for example, there are special offices within the BKA and in the criminal investigation divisions in the various states. These organizations are responsible for conducting investigations that have a regional impact. When coordination is required at a level above that of the region, this task is undertaken by the Organized Crime Commission, which is composed of the heads of the BKA and the criminal investigation divisions for the individual states. In Italy, in addition to the three police forces, there is a new one devoted to the fight against organized crime and another devoted to the fight against drug trafficking: The State Police, the Carabinieri, the Customs Police, the Anti-Mafia Investigative Board and the Central Anti-Drug Board (Direzione Centrale Antidroga). Each of these police forces has its own local offices to investigate criminal acts,

and also dispose of special units to investigate organized crime and drug trafficking. These investigative agencies have numerous regional and interprovincial offices to address crime problems that cross local and provincial boundaries. At the national level, these police forces operate through their own appropriate offices and regularly coordinate their activities. For example, intelligence information is coordinated by use of the data base which is jointly operated and is located at the Data-Processing Centre of the Interior Ministry. Special anti-Mafia district attorneys (Procure Distrettuali Antimafia) and a national anti-Mafia prosecutor (see paragraph 63 above) have recently been established. Their role is to coordinate the investigation and prosecution of organized crime cases.

87. In Jamaica, the police department has an organized crime unit, headed by a superintendent of police, who is accountable to the Deputy Commissioner of Police. This unit conducts undercover operations and is specifically charged with the responsibility of investigating various posses and gangs. In addition to the Organized Crime Unit, the following specialized agencies in the police department gather evidence with regard to organized crime prosecutions: Narcotics Division, Special Operations Division, Criminal Intelligence Division, Flying Squad, and the Monitoring and Analysis Division. The Organized Crime Unit, by use of regular conferences and meetings among the heads of the various agencies, coordinates the various activities under the Deputy Minister of Police. In the United Kingdom, there are no specialized units devoted to the prosecution of organized crime, in that traditional criminal organizations such as the Mafia do not at present have a large operational base in the United Kingdom. There are, however, nine regional crime squads located in England and Wales, which are composed of officers detailed from the 43 metropolitan police forces for three-year tours of duty. The responsibilities of these units are: (a) to identify and arrest those responsible for serious criminal offences which transcend the jurisdiction of individual police forces; (b) to cooperate with the regional criminal intelligence offices in gathering intelligence; (c) at the request of the chief of one of the 43 police forces, to assist in the investigation of serious crime. All operations conducted in relation to organized crime are recorded within the intelligence system and are cross-referenced to the individuals that are under investigation. Close liaison is maintained between the 43 municipal police forces and the regional crime squads. These organizations frequently conduct joint operations.

88. In the United States, the principal investigative agency responsible for organized crime investigations is the FBI, although many other investigative agencies make crucial contributions to this effort. In areas where the Cosa Nostra has a major presence, there are special units termed "strike force units", composed of experienced federal prosecutors dedicated to the investigation of organized crime cases. There is also a strategic reserve of prosecutors in Washington, D.C., who are available to develop organized crime cases in any particular area. In areas where there are large-scale drug activities, there are "drug task force" units devoted to prosecuting drug offences. In any event, the investigation and prosecution of organized crime at the policy level is coordinated by the Attorney General's Organized Crime Council, which is composed of the directors of the various investigative agencies and high ranking officials within the Justice Department.

89. With reference to the relationship between prosecutors and investigators, the situation varies according to the different structures of the criminal justice systems and law enforcement agencies. For example, in Brazil, the police are responsible for gathering evidence, which is later presented to the court for its decision. The prosecutor assists the court in developing the evidence during the trial of the case. Unlike some South American countries, there are no investigating magistrates in Brazil. In Italy, the new code of criminal procedure provides that the prosecutor bears the ultimate responsibility for investigating criminal activity. Owing to their high degree of complexity, organized crime cases may involve more than one public prosecutor. In that event, prosecutors are to share and exchange documents and other relevant information, as well as to coordinate with each other all instructions given

to the judicial police. The district anti-Mafia attorney's offices and the National Anti-Mafia Prosecutor are responsible for implementing this cooperation procedure.

90. In Jamaica, the Director of Public Prosecutions is in charge of all criminal proceedings on the island and works closely with the police in the investigation of organized crime. The magistrate's role is to adjudicate on matters presented to the court for trial and to issue, for example, warrants to ensure the satisfactory conclusion of the trial process. In Mexico, as previously noted, the Public Prosecutor is the official who bears the ultimate responsibility for both the investigation and prosecution of criminal offences. In performing such functions, assistance is provided by the Federal Police.

91. In the United Kingdom, the Crown Prosecuting Agency is an independent prosecuting agency, and is generally viewed as standing apart from the investigation of the crime and the operation of the police. The majority of the investigations are conducted without reference to the Crown Prosecution Service until such time as there is sufficient evidence available to institute criminal proceedings. An exception to this general principle is in cases involving serious fraud falling under the responsibility of the Serious Fraud Office. In the United States, the prosecutive and investigative agencies have forged a close working relationship when it comes to organized crime. For example, the law requires that all electronic surveillance must be applied for and supervised by a prosecutor, who then has the responsibility of reporting the status and progress of the surveillance to the court that authorized it. Coordination between the prosecutor and the investigative agency is maintained at all steps in an organized crime investigation, taking into account the distinct areas of responsibility, that is to say, the function of the investigator is primarily related to the pre-trial preparation of a case, while the primary responsibilities of the prosecutor are the charging decision and the trial of a case before a jury.

92. In any case, whether or not a separate unit is created to deal with organized crime, there should be accountability for responsibility and resources. If, for example, one police agency is assigned the primary responsibility for organized crime investigations, or if one or more agencies receive budgetary allocations to fight organized crime, the assignment of responsibility should be clear. In this way, at the end of the year or when controversies arise, the public and legislative oversight body could demand accountability from the responsible agency or body, regarding, for example, what accomplishments were achieved, how many persons were convicted and what assets were seized as a result of the budgetary resources or legal authority given to any particular agency.

## CONCLUSIONS: TOWARDS AN INTEGRATED APPROACH

93. From the preceding analysis some brief conclusions may be drawn, which are also in line with the issues highlighted by the Commission on Crime Prevention and Criminal Justice at its third session.[19]

94. It will be recalled that the General Assembly, in its resolution 45/123, invited Member States to make available to the Secretary-General the provisions of their legislation relating to money-laundering and other measures to counter organized crime. Member States were requested, accordingly, by three notes verbales of 6 March 1991, 7 November 1991 and 9 July 1992, to provide to the Secretariat information on their legislative and other measures to combat organized crime and money-laundering. To date, 46 Member States have responded to this request. A survey of their replies demonstrates that, while certain countries have made considerable progress in establishing and implementing substantive and procedural legislation, law enforcement methods and other measures suitable to combat organized criminal activities, there are still a number of countries that lack any adequate legal provisions, and the judicial and investigative means and structures required to fight organized crime. In fact, most of the national legislative provisions reported to the Secretary-General pertain to drug related crimes, as a result

of the efforts of Member States to implement the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (E/CONF.82/15 and Corr.2). The rapid expansion of organized crime across borders, particularly at a time when efforts to liberalize trade and secure economic integration are being accentuated, makes the adoption and implementation of effective prevention and control measures essential. A lack of such measures at the national level, in addition to the threat that it poses to national economic development and security, will adversely affect international cooperation, to the detriment of efforts already under way and to the benefit of criminal organizations. The absence of legal and regulatory measures against organized transnational crime reflects the difficulties faced by a number of countries, particularly developing countries and those in transition, in coping with the problem.[20] It also demonstrates the urgent need for strengthened international cooperation and assistance to those countries, which, because of their particular situation or economic potential for the future, have become a primary target for transnational criminal organizations.

95. For action against organized crime to be effective, priority objectives must be determined and resources need to be efficiently managed. As it may realistically be impossible to fight all forms of crime with the same intensity in any particular society, a decision has to be taken on which of the most dangerous or serious ones should be pursued, taking into account the limited resources available. The difficulty lies in determining the criteria for such a selection. For example, is organized crime more dangerous than other forms of street crime or the so-called "victimless" crimes? The answers can be totally different, depending on the level of awareness and perception of the problem, which have a bearing on people's fear of crime; this, in turn, increases in proportion to the probability of experiencing that crime.[21] It is possible that in countries where organized crime does not strike the public as being as violent or as damaging as it does in other countries, it may not be regarded to as a top priority. Also, street crimes are closer than transnational organized crime to the day-to-day experience of the general public. Decision-makers, who are necessarily sensitive to public opinion and are also aware of the costs and the impact of these forms of crime on society at large, may be forced to take decisions that favour an immediate response to violent street crimes. The reality, however, is that there clearly exists a global-local nexus in relation to organized transnational crime.

96. In the area of substantial legislation, efforts against organized transnational crime would be considerably strengthened through the introduction of legislative reforms focused on:

(a) Criminalization of participation in a criminal organization;

(b) Criminalization of conspiracy or similar forms of inchoate offences;

(c) Prohibition of the laundering of criminal profits;

(d) Sanctions and other measures, such as the confiscation of goods and measures to prevent the preservation of illicit profits, aimed at defeating the economic power of criminal organizations.

97. As far as police action and criminal proceedings are concerned, strategic measures are required in the following areas:

(a) The improvement of intelligence in order to identify the organizational structure of criminal groups, types of activity of these groups, interrelations between the various groups and the means they use for self-perpetuation;

(b) The development of investigative methods that make it possible to "penetrate" criminal organizations, such as the creation of specialized investigative units, the interception of communications, the use of undercover operations and controlled deliveries, the protection of witnesses and victims, and the reward and protection of cooperative witnesses and accomplices;

(c) The development of investigative methods and other mechanisms aimed at seizing and freezing illicit profits and thus facilitating confiscation, for example the establishment of appropriate structures at the national level (integrated proceeds of crime units and seized property management directorates).

98. Strategic measures also include those addressed to the law enforcement agencies, in terms of enhanced capability, professionalism and coordination. Strategic intelligence should not be sacrificed to tactical intelligence. Investment in this area is essential, as is cooperation between different agencies. The concentration of energies and resources against organized crime in a specialized agency could be an innovative organizational measure only if this concentration truly happens. When this is not possible because of the notorious difficulties inherent in such a measure and the resistance to it, substantial and effective coordination among existing agencies and between the agencies and the prosecutors should be consistently pursued. Different patterns of cooperation and coordination can be found in the most experienced law enforcement agencies of many countries.

99. The growing threat to the economy posed by organized crime requires the progressive development of preventive strategies, mostly designed to preserve the stability of financial institutions and focused on:

(a) The provision of technical and forensic training for police, prosecutors and judges, enabling them to understand financial operations and collect evidence;

(b) The limitation of bank secrecy and other relevant regulations;

(c) A more active role for financial institutions in appropriate situations, for example in reporting suspicious transactions.

100. The criminal justice system on its own, overburdened and overloaded as it usually is, suffers from structural limitations in its ability to control organized crime. This situation calls for heavy investment in preventive strategies, which have probably been neglected in the past. The different systems to which these strategies are addressed therefore need to be increasingly integrated. The process, which began with the call for more cooperation between the banking system and the criminal justice system, should be extended to the educational system and to all areas of media communication. Commissions of inquiry and overviewing legislative committees could encourage such a process, which is a progressive one, involving a wide set of new policies and institutions traditionally outside the area of criminal justice. Administrative law and other forms of regulation of public contracts could reduce the probability of corruption and defend legitimate businesses from the infiltration attempts of organized crime groups. Together with the existing "hard laws", a new set of "soft laws" is necessary both domestically and internationally for achieving new standards of morality. The progressive elaboration of codes of conduct is a positive signal, as are other soft laws, such as the recommendations made by the Financial Action Task Force on Money-Laundering, set up by the Group of Seven major industrialized countries, which are influencing domestic policies.

101. The integration of strategies, policies and mechanisms, with effective and transparent management, is a challenging answer to the growing danger posed by transnational organized crime.

Notes

[1]Working paper on effective national and international action against: (a) organized crime; and (b) terrorist criminal activities, prepared by the secretariat of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (A/CONF.144/15); resolution No. 24 on the prevention and control of organized crime of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (see Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C); report of the Secretary-General on the strengthening of international cooperation in combating organized crime, submitted to the General Assembly at its forty-seventh session (A/47/381); account of the discussion on national and transnational crime, economic crime, including money-laundering, and the role of criminal law in the protection of the environment in the Commission on Crime Prevention and Criminal Justice at its second session, chap. II, sect. A; General Assembly resolutions 44/71, 45/123 and 47/87 on international cooperation in combating organized crime; Economic and Social Council resolution 1992/23 on organized crime and Economic and Social Council resolution 1994/12 on organized transnational crime.

[2]See E. U. Savona, "La réglementation du marché de la criminalité", Revue internationale de criminologie et de police technique, vol. XLV, No. 4 (1992).

[3]See R. J. MacCoun, J. P. Kahan, J. Gillespie and J. Rhee, "A content analysis of the drug legalization debate", Journal of Drug Issues, vol. 23, No. 4 (Fall 1993).

[4]See "Conclusions and recommendations of the meeting of the Ad Hoc Expert Group on Managing the Risk of Violence in a Criminal Justice System: a Framework of Analysis, held at Chicago, United States of America, from 18 to 20 August 1993" (E/CN.15/1994/4/Add.3, annex).

[5]See "Discussion guide on demonstration and research workshops to be held at the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders", prepared for the Commission on Crime Prevention and Criminal Justice at its third session (A/CONF.169/PM.1/Add.1), chap. III, sect. B, paras. 40-51.

[6]New York State Organized Crime Task Force, Corruption and Racketeering in the N.Y. City Construction Industry (final report to Governor M. Cuomo, December 1989).

[7]E. U. Savona, op. cit., para. 6.2.

[8]See Joseph Serio, "Organized crime in the former Soviet Union: only the name is new", CJ International, vol. 9, No. 4 (July-August 1993), p. 11.

[9]See E. U. Savona and M. DeFeo, "Money trails: international money laundering trends and prevention/control policies", report prepared for the International Conference on Preventing and Controlling Money-Laundering and the Use of the Proceeds of Crime: a Global Approach, held at Courmayeur, Italy, from 18 to 20 June 1994, p. 97.

[10]Report and recommendations of the International Conference on Preventing and Controlling Money Laundering and the Use of the Proceeds of Crime: a Global Approach, held at Courmayeur, Italy, from 18 to 20 June 1994 (E/CONF.88/7, annex).

[11]See Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C.

[12]See Recommendations on Bribery in International Business Transactions, adopted by the Organisation for Economic Co-operation and Development on 27 May 1994.

[13]See resolution No. 1 on civil, administrative and criminal aspects of corruption, adopted by the Council of Europe 19th Conference of European Ministers of Justice, held at Valletta in 1994; see also "Extortion and bribery in international business transactions" in the report adopted by the Council of the International Chamber of Commerce at its 131st session on 27 November 1977.

[14]United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (E/CONF.82/15 and Corr.2), art. 5, para. 4.

[15]See E. U. Savona and M. DeFeo, op. cit., p. 97.

[16]See "Conclusions and recommendations of the meeting of the Ad Hoc Expert Group on Managing the Risk of Violence in a Criminal Justice System: a Framework of Analysis, held at Chicago, United States of America, from 18 to 20 August 1993" (E/CN.15/1994/4/Add.3, annex, sect. III).

[17]Guide to Computerization of Information Systems in Criminal Justice, Studies in Methods, Series F, No. 58 (United Nations publication, Sales No. E.92.XVII.6).

[18]Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice (United Nations publication, Sales No. E.92.IV.1), Part One, sect. D.

[19]See Official Records of the Economic and Social Council, 1994, Supplement No. 11 (E/1994/31), chap. II, paras. 19-29 and Economic and Social Council resolution 1994/12 on "Organized Transnational Crime", annex.

[20]See the reports of the Asian and Pacific, European, Latin American and Caribbean, African, and Western Asia Preparatory Meetings for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (A/CONF.169/RPM.1/Rev.1, A/CONF.169/RPM.2, A/CONF.169/RPM.3, A/CONF.169/RPM.4 and A/CONF.169/RPM.5).

[21]A. Alvazzi del Frate, U. Zvekic and J.J.M. van Dijk, eds., Understanding Crime. Experiences of Crime and Crime Control, No. 49 (United Nations Interregional Crime and Justice Research Institute, Rome, 1993).